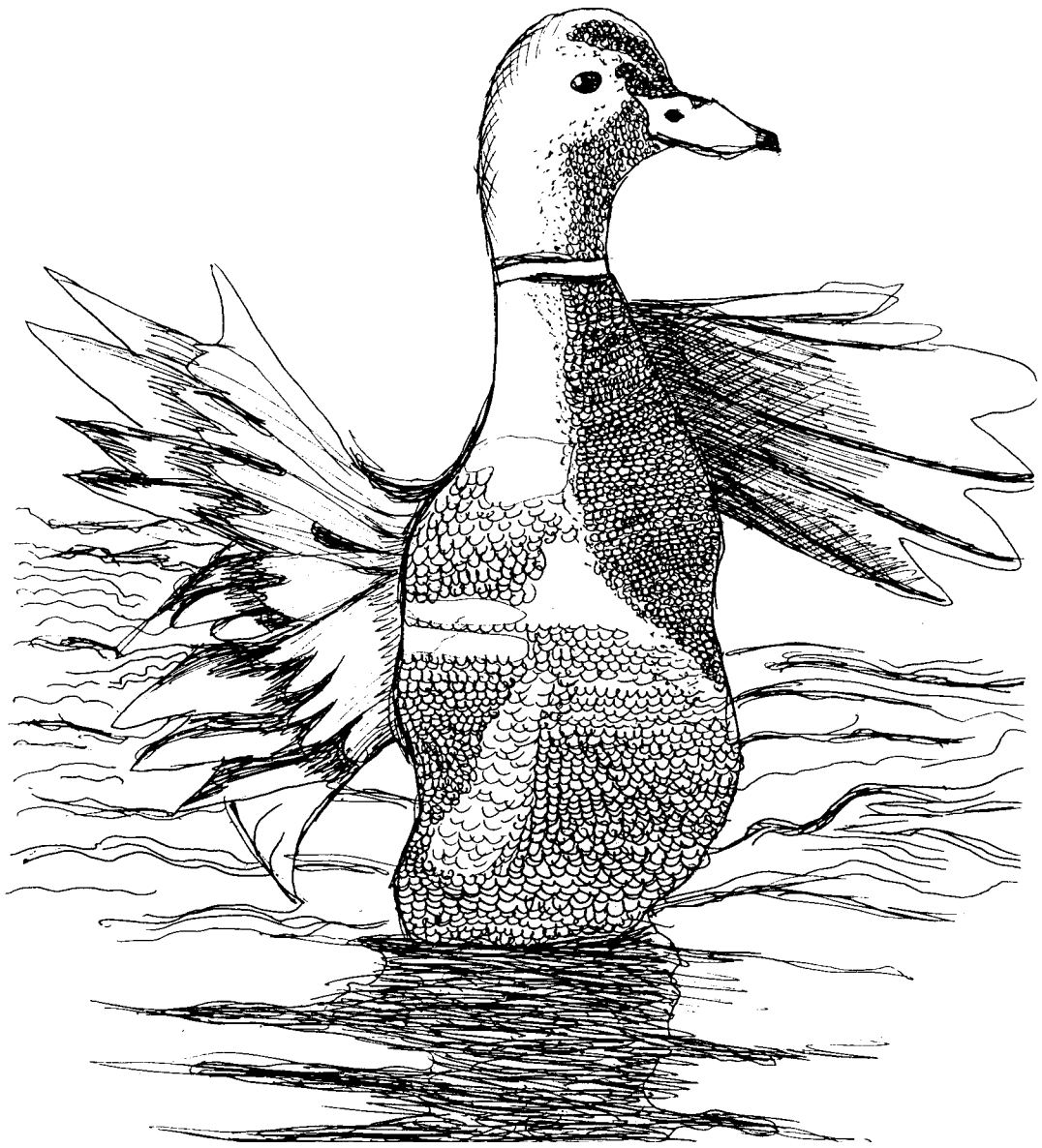
TEXAS REGISTER

Volume 25 Number 35 September 1, 2000 *Pages 8529-8808*



This month's front cover artwork:

Artist: *Terriney Bennett*
5th grade
French Elementary

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*.

Texas Register, (ISSN 0362-4781), is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $150, six months $100. First Class mail subscriptions are available at a cost of $250 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

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The **Texas Register** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas.

POSTMASTER: Send address changes to the **Texas Register,** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0268. Mr. Terry W. Langford, Eastland County Auditor, 100 W. Main, Room 205, Eastland, Texas 76448, regarding whether Ranger Hospital District is authorized to donate tobacco settlement funds to the City of Ranger for the purchase of an ambulance without the City assuming any District liabilities, and related questions (RQ-0190-JC)

S U M M A R Y. The Ranger Hospital District in the context of dissolution is not authorized to transfer its tobacco settlement funds to the City of Ranger for the purchase of an ambulance without the City assuming any remaining debts and obligations of the District. An election is required to approve dissolution of the District.

Opinion No. JC-0269. The Honorable Delma Rios, Kleberg County Attorney, P.O. Box 1411, Kingsville, Texas 78364, regarding disposition of funds collected by sheriff pursuant to article 42.12, §11(a)(19), Code of Criminal Procedure (RQ-0192-JC)

S U M M A R Y. Funds collected by a sheriff's department pursuant to §11(a)(19) of article 42.12 of the Code of Criminal Procedure are not analogous to the "hot check" fund created by article 102.007(f) of the Code of Criminal Procedure and must be deposited, administered, and disbursed in accordance with the ordinary county fiscal process. There are no statutory restrictions as to how they may be expended, but they are subject to the general restrictions of Texas Constitution article III, §52 that they must be expended for public purposes.

Opinion No. JC-0270. D.C. Jim Dozier, J.D., Ph.D., Executive Director, Texas Commission on Law Enforcement, Officer Standards-Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, regarding whether an elected constable may simultaneously serve as a municipal fire fighter (RQ-0206-JC)

S U M M A R Y. The common-law doctrine of incompatibility does not bar an individual from simultaneously serving as an elected constable and a municipal fire fighter.

Opinion No. JC-0271. The Honorable Yvonne Davis, Chair, Local, and Consent Calendars Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding authority of a state licensed or certified real estate appraiser to complete a Valuation Conditions Form for Federal Housing Administration mortgage insurance appraisals (RQ-0201-JC)

S U M M A R Y. Only state licensed or certified real estate appraisers who have voluntarily applied to and have been deemed qualified by the United States Department of Housing and Urban Development to perform FHA mortgage insurance appraisals are required to complete the Valuation Conditions Form on FHA mortgage insurance appraisals. A state licensed or certified real estate appraiser eligible to perform FHA appraisals is authorized to complete the Valuation Conditions Form. Completion of this form as required by federal law does not conflict with state licensing requirements for performing real estate appraisals and real estate inspections.

For further information, please call (512) 463-2110

TRD-200005919
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 22, 2000

♦ ♦ ♦

Request for Opinions

RQ-0265-JC. The Honorable Florence Shapiro, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether the Texas State Board of Medical Examiners may prohibit physician advertising containing a testimonial (Request No. 0265-JC)

Briefs requested by September 21, 2000

RQ-0266-JC. The Honorable Michael P. Fleming, Harris County Attorney,1019 Congress, 15th Floor, Houston, Texas 77002-1700, regarding whether a commissioners court may require mandatory attendance at a pre-bidders' conference as a condition precedent to acceptance of bid proposals (Request No. 0266-JC)

Briefs requested by September 21, 2000

RQ-0267-JC. The Honorable Juan J. Hinojosa, Chair, Committee on Criminal Jurisprudence, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding disciplinary actions permissible against an employee of a sheriff's office under particular circumstances (Request No. 0267-JC)

Briefs requested by September 21, 2000

RQ-0268-JC. The Honorable Jeff Wentworth, Chair, Nominations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding whether a governmental body may disclose one bidder's proposal and subsequently extend the bidding process to permit others to change their proposals, and related questions (Request No. 0268-JC)

Briefs requested by September 21, 2000

RQ-0269-JC. The Honorable Bill Ratliff, Chair, Finance Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding applicability of various state statutes to local government corporations created under chapter 431 of the Transportation Code

Briefs requested by September 23, 2000

RQ-0270-JC. The Honorable Senfronia Thompson, Chair, Committee on Judicial Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the addition of certain protest words to a traffic citation constitutes a valid promise to appear in court (Request No. 0270-JC)

Briefs requested by September 22, 2000

For further information, please call (512) 463-2110.

TRD-200005920
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 22, 2000

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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 31. NATURAL RESOURCES AND CONSERVATION

PART 20. EDWARDS AQUIFER AUTHORITY

CHAPTER 720. EMERGENCY DROUGHT MANAGEMENT PLAN RULES FOR 2000

SUBCHAPTER A. DEFINITIONS

31 TAC §720.1

The Edwards Aquifer Authority is renewing the effectiveness of the emergency adoption of new §720.1, for a 60-day period. The text of the new section was originally published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4657).

Filed with the Office of the Secretary of State, on August 21, 2000.

TRD-200005870
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: September 7, 2000
Expiration date: November 6, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

SUBCHAPTER B. EMERGENCY DROUGHT MANAGEMENT RULES

31 TAC §§720.120, 720.122, 720.124, 720.126, 720.128, 720.130, 720.132, 720.134, 720.136, 720.138, 720.140, 720.142, 720.144, 720.146, 720.148, 720.150, 720.152, 720.154, 720.156, 720.157, 720.158, 720.160, 720.162, 720.164

The Edwards Aquifer Authority is renewing the effectiveness of the emergency adoption of new §§720.120, 720.122, 720.124, 720.126, 720.128, 720.130, 720.132, 720.134, 720.136, 720.138, 720.140, 720.142, 720.144, 720.146, 720.148, 720.150, 720.152, 720.154, 720.156, 720.157, 720.158, 720.160, 720.162, and 720.164, for a 60-day period. The text of the new sections were originally published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4662).

Filed with the Office of the Secretary of State, on August 21, 2000.

TRD-200005868
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: September 7, 2000
Expiration date: November 6, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS
SUBCHAPTER C. ERADICATION OF TUBERCULOSIS IN CERVIDAE

4 TAC §43.23

The Texas Animal Health Commission (commission) proposes an amendment to Chapter 43, Subchapter C, concerning the Eradication of Tuberculosis. This proposal amends §43.23, which is requirements for entry into Texas for Cervidae.

The rule is amended to address the tuberculosis conditions that have been verified in the state of Michigan. The Commission recently adopted specific entry requirements for animals coming from all of Michigan in response to the status of the quarantine affecting the whole state. Earlier, the commission had specific entry requirements for cattle and goats coming from a specific quarantine area in Michigan, as designated in the rules. However, as tuberculosis was recently discovered in animals outside of the quarantine zone, the commission recently adopted changes to the rule by requiring a special entry requirement for cattle and goats coming from all other areas in Michigan. This requirement is proposed to be added to reduce the risk of allowing a potentially infected animal to move from Michigan into Texas.

Most recently Michigan has found that tuberculosis is having a persistent impact on Michigan livestock giving the state of Texas heightened concern over animals coming to Texas from Michigan. The Commission is proposing new changes to entry requirements in order to protect cattle and goats as well as to establish new standards for deer from Michigan. These rules propose to affect all cattle, bison, goats and cervidae from Michigan and require that an animal originate from a herd that has been tested, as well as, to require an individual test within sixty days of entry into Texas. Furthermore, the rule is being amended to denote that the quarantine zone will also include any other counties or parts of counties added at a later date.

Mrs. Angela Lucas, Director of Financial Services, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. The agency currently administers the tuberculosis program which includes the entry requirements for animals coming into Texas. The proposed changes will not create any additional costs to the agency to administer the program.

Mrs. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clear and concise regulations. Also, the rule is being proposed in order to protect Texas livestock from potentially being exposed to tuberculosis from Michigan.

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

The agency has determined that the proposed governmental action will not affect private real property. The proposed rule is an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendment may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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

§43.23. Requirements for Entry into Texas.

(a) Cervids that originate from Accredited-Free herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating such cervids originated from an Accredited-Free herd.

(b) Cervids not known to be affected with or exposed to tuberculosis that originate from Qualified herds may enter if they are accompanied by a certificate stating that such cervids originate from a qualified herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement. If the qualifying herd test was administered within 90 days of movement, the animal(s) do not require an additional test.

(c) Cervids not known to be affected with or exposed to tuberculosis that originate from Monitored herds may enter if they are accompanied by a certificate stating that such cervids originate from a monitored herd and have been classified negative to an official tuberculosis test, which was conducted within 90 days prior to the date of movement.

(d) Cervids not known to be affected with or exposed to tuberculosis that originate from all other herds may enter if they are accompanied by a certificate stating that such cervids have been classified negative to two official tuberculosis tests, which were conducted no less than 90 days apart; that the second test was conducted within 90 days prior to the date of movement; and that the animals were isolated from all other members of the herd during the testing period.

(e) Cervids less than 12 months of age that originate from and were born in accredited, qualified, or monitored herds may enter without further tuberculosis testing provided they are accompanied by a certificate stating that such cervids originated from such herds and have not been exposed to cervids from a lower status.

(f) No animal with a response to any tuberculosis test is eligible for entry unless that animal is subsequently classified ~negative for tuberculosis~ based upon an official tuberculosis test, or is consigned directly to slaughter.

(g) Cervids moving from an American Zoo and Aquarium Association (AZAA) accredited facility directly to another facility accredited by the AZAA are exempt from these entry requirements provided those cervids being moved are not commingled with cervids from other sources during the transfer.

(h) Cervids sold or transferred from an AZAA accredited facility located either in Texas or another state to an owner/agent in Texas, other than another AZAA accredited facility, must comply with these testing requirements.

(i) Special entry requirements for cervids originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by I-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties as well as any other counties or parts of counties added to the quarantine zone by the state of Michigan.

(1) All cervids shall originate from an accredited herd.

(2) In addition, all cervids 6 months of age and older shall be classified negative to an official tuberculosis test conducted within 90 days prior to the date of movement.

(j) Special entry requirements for cervids originating from all areas in Michigan, other than those described in subsection (i) of this section. All cervids shall:

(1) originate from an accredited herd; or

(2) originate from a herd that had a negative whole herd test including all animals 12 months and older during the previous 12 months; and

(3) shall be tested negative for tuberculosis within 90 days prior to entry with results of the tests recorded on the certificate of veterinary inspection.

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 16, 2000.

TRD-200005825
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 719-0714

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CHAPTER 51. INTERSTATE SHOWS AND FAIRS

4 TAC §51.2

The Texas Animal Health Commission proposes an amendment to Chapter 51, concerning Interstate Shows and Fairs. This amends §51.2 which is General Requirements and provides for entry requirements for animals coming into Texas. Specifically, the rule being proposed for amendment requires that "all non-quarantined livestock or poultry entering Texas from any state, territory, or foreign country shall have a certificate of veterinary inspection," with specific exception. The Commission proposes to exempt all cattle entering Texas from brucellosis free states if they are delivered directly to slaughter or consigned to slaughter and accompanied by a waybill. This exemption conforms to exemptions found in other states and there is a very minimal health risk from these animals entering due to their herd of origin as well as by the ultimate destination.

Mrs. Angela Lucas, Director of Financial Services, Texas Animal Health Commission, has determined 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 rules.

Mrs. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations.

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

The agency has determined that the proposed governmental action will not affect private real property. This adopted rule is an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC

§59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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

§51.2. General Requirements.

(a) Entry from nonquarantined herd, flock, or area. All livestock or poultry entering Texas from any state, territory, or foreign country shall be from a herd, flock, or area not under quarantine except as provided in subsection (c) of this section.

(b) Certificate of veterinary inspection.

(1) All nonquarantined livestock or poultry entering Texas from any state, territory, or foreign country shall have a certificate of veterinary inspection, except:

(A) cattle 18 months of age and over delivered directly from the farm of origin to slaughter or a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(B) cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, to a designated pen, or to a quarantined feedlot when accompanied by an "S" permit on which each animal is individually identified. Brucellosis test data shall be written on the "S" permit and include test date and results of that test;

(C) steers, spayed heifers, cattle under 18 months of age, sheep and goats delivered to slaughter or livestock market by the owner or consigned there and accompanied by a waybill;

(D) cattle from brucellosis free states delivered directly to slaughter or consigned to slaughter and accompanied by a waybill;

(E) [~~(D)~~] swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(F) [~~(E)~~] baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6 or, have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission; and

(G) [~~(F)~~] steers, spayed heifers, and cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection along with proof of brucellosis vaccination of heifers which are required to be vaccinated.

(2) The certificate of veterinary inspection shall state that:

(A) the veterinarian found the animals to be free of symptoms or evidence of communicable diseases determined by the commission to be dangerous to Texas animals; and

(B) the animals were subjected to tests, immunizations, and treatment required by rule of the commission. Animals that have been vaccinated or tested for any disease as required by the commission shall be individually identified on the certificate of veterinary inspection except that brucellosis vaccinated heifers under 18 months of age with tattoos and vaccination tags require only a statement by the veterinarian that they are vaccinated and individually identified.

(c) Livestock or poultry entering from quarantined herds, flocks, or areas.

(1) Animals, poultry, or birds originating in a state or area under quarantine as a result of action taken during a meeting of the commission shall not be moved into Texas except as specified in the quarantine notice.

(2) Animals, poultry, or birds affected with or recently exposed to infectious, contagious, or communicable disease and not in an area or state under the commission's quarantine or that originate in quarantined herds or flocks shall not be moved into Texas unless:

(A) they are consigned to slaughter or quarantined feedlot and accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or regularly employed veterinarians or inspectors of the state of origin or of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services; or

(B) upon written permission by the executive director of the commission for each consignment.

(d) Entering Shows, Fairs, Exhibitions, and Assemblies.

(1) Out-of-state or area origin. Livestock and poultry entering for exhibition and sale shall be accompanied by a certificate of veterinary inspection and a permit for entry. Livestock and poultry entering only for exhibition purposes are required to be accompanied by a certificate of veterinary inspection. Vaccination for brucellosis is not required for cattle. Equine may enter shows, fairs, exhibitions or assemblies without a certificate of veterinary inspection when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months. Sponsors of an assembly of equine are required to implement a procedure for review of records on each equine animal to confirm proof of EIA test negative status within the previous twelve months prior to allowing entry of the equine into facilities or locations where the animals will be commingled. Procedures other than confirmation of proof of EIA test negative status by the event sponsor(s) at the time of arrival at the event shall be submitted to the Commission at least 30 days prior to the event for consideration. A decision regarding a proposed procedure will be provided to the sponsor within 10 days of receipt by the Commission. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

(2) In-state origin.

(A) Equine. Must have had a negative EIA test within the past 12 months if entering a show, fair, exhibition, or assembly. Sponsors of an assembly of equine are required to implement a procedure for review of records on each equine animal to confirm proof of EIA test negative status within the previous twelve months prior to allowing entry of the equine into facilities or locations where the animals will be commingled. Procedures other than confirmation of proof of EIA test negative status by the event sponsor(s) at the time of arrival at the event shall be submitted to the Commission at least 30 days prior to the event for consideration. A decision regarding a proposed procedure will be provided to the sponsor within 10 days of receipt by the Commission. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection. Foals nursing a negative dam are exempt from testing.

(B) Breeding rams. May enter shows, fairs, and exhibitions without a test for Brucella ovis if they originate in Texas.

(C) Other livestock and poultry. Shall meet the same requirements for those entering from out-of-state and be accompanied by a certificate of veterinary inspection when entering shows, fairs, and

exhibitions that are determined to be interstate. Livestock entered in all intrastate shows, fairs, and exhibitions are exempt from the certificate of veterinary inspection and testing requirements except poultry shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 30 days before exhibition.

(e) Entry permits.

(1) All livestock or poultry entering Texas from any state, territory, or foreign country shall have an entry permit unless exempt by regulations governing entry by species or disease.

(2) Entry permit requests shall be directed to the commission by either writing to Texas Animal Health Commission c/o Permits, P.O. Box 12966, Austin, Texas 78711-2966; or by telephoning (512) 719-0777.

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 16, 2000.

TRD-200005826
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 719-0714

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. REGULATED LOAN LICENSES

DIVISION 1. GENERAL PROVISIONS

7 TAC §1.4, §1.11

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

The Finance Commission of Texas (the commission) proposes the repeal of §1.4 and §1.11.This repeal is necessary because the sections that are proposed for repeal relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069-3.01*et seq.*, which was repealed by the 75th Legislature.

These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, §167, 75th Legislature. Moreover, they are being replaced by new rules for Texas Finance Code, Chapter 342. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five- year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. These is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected Chapter 342, Texas Finance Code. Division 1. General Provisions

§1.4. Conditional Granting of Credit.

§1.11. Loan Size, Duration, and Schedule of Installments: Limitations.

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 18, 2000.

TRD-200005853
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7640

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DIVISION 2. APPLICATION FOR LICENSE AND TRANSFER OF LICENSE

7 TAC §1.41

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

The Finance Commission of Texas (the commission) proposes the repeal of §1.41. This repeal is necessary because the section that is proposed for repeal relates to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, which was repealed by the 75th Legislature.

These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, §167, 75th Legislature. Moreover, they are being replaced by new rules for Texas Finance Code, Chapter 342. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. These is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected Chapter 342, Texas Finance Code. Division 2. Application for License and Transfer of License

§1.41. Relocation of Licensed Offices or Accounts.

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 18, 2000.

TRD-200005854
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7640

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SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §1.852, §1.854

The Finance Commission of Texas (the commission) proposes the adoption of new §1.852 and §1.854 concerning prohibitions on authorized lenders.

Simultaneously, the Finance Commission is repealing various rules and adopting these rules in their place. These rules being repealed were reviewed and those being proposed to be adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist.

Section 1.852 requires a licensee to consider the borrower's financial ability to repay a loan when structuring the terms of a loan. This rule is designed to prohibit a lender from overburdening a consumer's debt load beyond that consumer's capacity to repay.

Section 1.854 prohibits the use of preapproved offers of credit unless the offer is unconditional. This is a new provision and will serve to reduce confusion of consumers who receive offers of credit that purport to be "approved," but upon further review, in fact, have conditional features. The rule further provides that offers of credit may not be conditioned upon the purchase of goods and services unless that practice has been specifically authorized in statute. This rule is further designed to protect consumers from usury violations.

The Subchapter K rules are also necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of Texas Finance Code, Chapter 342, et seq. Generally, these rules prescribe procedures that are well established and have been and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the procedures.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification to lenders of the maximum allowable charges provided under the law and guidelines for compliance, thereby assisting lenders and borrowers in constructing transactions that comply with the law. It is anticipated that there will be no adverse economic effect on small businesses.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new rules are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

These rules affect Chapter 342 of the Texas Finance Code.

§1.852. Loan Size, Duration, and Schedule of Installments: Limitation.

When making or negotiating a loan under Texas Finance Code, Chapter 342, licensees shall consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan. The lender should evaluate whether the borrower should be reasonably able to repay the loan in cash in the time and means provided in the loan contract and repay all other known obligations concurrently.

§1.854. Conditional Offers of Credit.

(a) No licensee shall solicit business by means of a "pre-approved," "approved," or any similar expression unless the statement or offer is unconditional. The term "unconditional" means not limited in any way.

(b) Subsection (a) of this section does not apply to a firm offer of credit, as that term is defined in 15 USC §1681a, that a creditor extends to a consumer following the procedures prescribed in 15 USC §1681b and §1681m.

(c) No licensee shall require the purchase of any goods, services, or intangibles from any person or firm as a condition to the granting or extending of credit, except as specifically authorized by the Texas Credit Title. This prohibition is not applicable to insurance premium

financing or similar transactions wherein the loan is made solely for the purpose of financing the purchase. This section shall not be construed so as to prohibit the conduct of another business by a licensee as is authorized by Texas Finance Code, §342.560.

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 18, 2000.

TRD-200005855
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §§25.471 - 25.485, 25.491, 25.492

The Public Utility Commission of Texas (commission) proposes new §§25.471 - 25.485, 25.491 - 25.492, Consumer Protection Rules for Retail Electric Service, governing the relationship between a retail customer and a retail electric service provider. The proposed new sections will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.101, Customer Safeguards; §39.1025, Limitations on Telephone Solicitation; and chapter 17, subchapters A, C and D, Customer Protection. Project Number 22255 has been assigned to this proceeding.

Within the proposed rules, the term "electric service provider" includes both affiliated and non-affiliated retail electric providers (REPs) and the provider of last resort (POLR); the term "service provider" encompasses all non-electric power service providers. The proposed new sections seek to foster competition in the provision of retail electric power service while ensuring customer protection and establishing rules to govern customer service by electric service providers. These sections govern the relationship between the retail customer and an electric service provider, beginning with the electric service provider's initial marketing to the potential customer and extending through the electric service provider's customer billing, and including, for nonpayment, possible termination of the contract by the REP or affiliated REP, or disconnection of service by the POLR.

More specifically, the proposed sections relate to the following: §25.471, General Provisions of Customer Protection Rules; §25.472, Privacy of Customer Information; §25.473, Non-English Language Requirements; §25.474, Selection or Change of Electric Service Provider; §25.475, Information Disclosures to Residential and Small Commercial Customers; §25.476, Request for Service; §25.477, Refusal of Service; §25.478, Credit Requirements and Deposits; §25.479, Issuance and Format of Bills; §25.480, Bill Payment and Adjustments; §25.481, Unauthorized Charges; §25.482, Termination of Contract; §25.483, Disconnection of Service; §25.484, Do Not Call List; §25.485, Customer Access and Complaint Handling; §25.491, Record Retention and Reporting Requirements; §25.492, Non-Compliance with Rules or Orders; Enforcement by the Commission.

On May 15, 2000, commission staff distributed a staff-generated strawman for discussion at a commission workshop held in Austin, Texas, on May 22 and 23, 2000. Following the workshop, commission staff entertained written comment on the strawman proposal.

Patricia Dolese, Director of Operations, Customer Protection Division, 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.

Ms. Dolese has also 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 a well ordered and more efficient market place that protects customers while promoting competition in the provision of retail electric power service to customers. Furthermore, there will be no adverse economic effect on small businesses or micro- businesses as a result of enforcing these sections. There may be economic costs to persons who are required to comply with the proposed sections. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Moreover, Ms. Dolese 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, and, therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission seeks comments on the proposed rules from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rules. When commenting on specific subsections of the proposed rules, 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 that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rules, the commission requests that parties specifically address the following issues:

1. Are the proposed rules consistent with the standards proposed by the Coalition for Uniform Business Rules (CUBR)?

2. Does the rule language regarding market practices and reporting requirements at §25.471(c) and §25.491(b)(1) provide

enough specificity for the commission to determine if a marketing practice is discriminatory?

3. Should the commission adopt a prepayment plan, as set forth in §25.478(a)(3)(D)-(E), as a means for bona fide low-income applicants and certified victims of family violence to avoid the necessity of paying a deposit that might otherwise be required in order to receive service? If so, what additional requirements, if any, should apply to such prepayment plans?

4. With respect to §25.479(b)(15), relating to issuance and format of bills, what labels should be required to be used by electric service providers that elect to present their electric bills in an unbundled format? Please provide the standard label and a definition of what types of charges or services that label should include.

5. Should an electric service provider other than the POLR be permitted to charge a late fee for overdue payments?

6. Should electric service providers be required to make available a voluntary customer donation program to benefit low income customers?

7. What provisions and processes within these rules should apply to the customers of individual cooperatives and municipally-owned utilities as they open their home markets to electric competition?

8. Is the minimum contract term established in §25.477(a)(9) the appropriate mechanism to discourage customers from gaming the affiliate REP's price to beat rate?

9. In light of the emergency rule adopted by the commission on August 10, 2000 in Project Number 22869, *Petition of Texas Ratepayers' Organization to Save Energy and Texas Legal Services Center to Adopt an Emergency Rule to Suspend Disconnection of Electricity Because of Extreme Heat and Persistent Heat,* should the commission adopt a new standard for terminations and disconnects during prolonged heat events, that would preclude the future need for such emergency rules? If so, please provide specific rule language that would be appropriate.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 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 section. All comments should refer to Project Number 22255.

Commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on October 16, 2000, at 9:00 a.m. in the Commissioners' Hearing Room at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The commission proposes these new rules pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2000) (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. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; §39.1025, which prohibits telephone solicitation to an electricity customer regarding the customer's choice of retail electric provider where the customer has given notice to the commission that it does not want to receive such solicitations, and which directs the commission to establish and provide for the operation of a database of customers giving such notice to the commission; §39.104, which grants the commission authority to use customer choice pilot projects; §39.106, which mandates the designation of providers of last resort by the commission; §39.107, which provides for metering services on introduction of customer choice; §39.202, which provides that an affiliated REP shall offer the "price to beat" to residential and small commercial customers of its affiliated transmission and distribution utility; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.102, 39.1025, 39.104, 39.106, 39.107, 39.202; and PURA chapter 17, subchapters A, C and D.

§25.471. General Provisions of Customer Protection Rules.

(a) Application. This subchapter applies to aggregators, service providers, and electric service providers. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1) Affiliated retail electric provider (REP) customer protection rules, to the extent the rules differ from those applicable to all electric service providers or the provider of last resort (POLR), shall not apply to the affiliated REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated REP customer protection rules shall apply until January 1, 2007.

(2) Requirements referenced to POLR apply to a REP only in its provision of service as a POLR.

(3) The rules in this subchapter shall take effect on January 1, 2001.

(4) The rules in this subchapter are mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. Customers other than residential or small commercial class customers may agree to terms of service that reflect either more or less customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall be provided to the commission upon request.

(5) The rules of this subchapter control over any inconsistent provisions, terms, and conditions of an electric service provider's contracts or other documents describing service offerings for customers or applicants in Texas.

(b) Purpose. The purpose of this subchapter is to:

(1) provide minimum standards for customer protection. An aggregator, service provider, or electric service provider may provide additional protections and customer rights and remedies provided the prohibition on discrimination set forth in subsection (c) of this section is not violated;

(2) provide customer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. §§1681, *et seq.*) and the Truth in Lending Act (15 U.S.C. §§1601, *et seq.*) Such protections

are applicable where appropriate, whether or not it is explicitly stated in the rules.

(3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and

(4) prohibit the use of fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, service providers, and electric service providers in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.

(c) Prohibition against discrimination. This subchapter prohibits electric service providers from refusing to provide electric service or otherwise discriminating in the marketing and provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(d) Definitions. For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:

(1) Applicant - A person who applies for retail electric service for the first time or reapplies after discontinuance of service.

(2) Competitive energy services - As defined in §25.341 of this title (relating to Definitions).

(3) Customer - A person who is currently receiving retail electric service from an electric service provider in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity.

(4) Days - Calendar days.

(5) Disconnection of service - Interruption of a customer's supply of electric service at the customer's meter by the transmission and distribution utility.

(6) Economically distressed geographic area - Zip code area in which the average household income is 60% or less than the statewide median income, as reported in the most recently available United States Census data.

(7) Electric service - Combination of transmission and distribution service and generation service provided to an end-use customer by an electric service provider. This term shall not include optional competitive energy services that are not required for the customer to obtain service from an electric service provider.

(8) Electric service provider - A retail electric provider certificated to provide electric service in the state of Texas. This term also includes municipally- owned utilities and electric cooperatives operating outside their service areas. An electric service provider may be an affiliated REP, a non- affiliated REP, or a designated POLR.

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

(10) Provider of last resort (POLR) - As defined in §25.43 of this title (relating to Provider of Last Resort).

(11) Registration agent - Entity designated by the commission to administer settlement and premise data and other processes concerning a customer's choice of electric service provider in the competitive electric market in Texas.

(12) Retail electric provider (REP) - Any retail electric provider as defined in §25.5 of this title (relating to Definitions) that is not an affiliated REP.

(13) Service provider - Entity that provides goods or services to customers, the charges for which are contained in the bills issued by the electric service provider.

(14) Small commercial customer - A nonresidential customer that has a peak demand of less than 50 kilowatts during any 12-month period.

(15) Standard meter - As defined in §25.341 of this title.

(16) Termination of service - Cancellation of a sales agreement or contract by an electric service provider by notification to the registration agent.

§25.472. Privacy of Customer Information.

(a) Mass customer lists.

(1) The commission may authorize the electric utility, the transmission and distribution utility or the registration agent to release to electric service providers and aggregators a mass customer list on or after January 1, 2001 and annually thereafter, consisting of a list of residential and small commercial customer name, address, rate classification, monthly usage for the most recent 12-month period, meter type, and account number.

(2) Prior to the release of such a list, the electric utility, the transmission and distribution utility or registration agent, as determined by the commission, shall issue a mailing to all customers which:

(A) explains the issuance of the mass customer list;

(B) provides the customer with the option of not being included on the list and allows the customer at least 15 days to exercise that option;

(C) offers the opportunity to be placed on the statewide Do Not Call list pursuant to §25.484 of this title (relating to Do Not Call List);

(D) provides a postage-paid postcard, a toll free telephone number, and an Internet website address to notify the designated entity of the customer's desire to be excluded from the list.

(3) The resulting list shall be issued to all electric service providers certified by and aggregators registered with the commission that will be providing retail electric or aggregation services to residential or small commercial customers.

(4) An electric service provider shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of an electric service provider prior to submission of the customer's enrollment to the registration agent.

(b) Individual customer information.

(1) An electric service provider or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including the electric service provider's affiliate, without obtaining the customer's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection or Change of Electric Service Provider). This prohibition shall not apply to the release of such information by an electric service provider or aggregator to:

(A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving electric service providers or aggregators;

(B) an agent of the electric service provider or aggregator engaged to collect an overdue or unpaid amount;

(C) credit reporting agencies pursuant to state and federal law;

(D) an energy assistance agency to allow a customer to qualify for and obtain other financial assistance provided by the agency; or

(E) local, state, and federal law enforcement agencies pursuant to lawful process.

(2) An electric service provider or aggregator shall not publicly disclose or make available for sale any customer-specific information about its customers including that obtained from the registration agent, the customer's transmission and distribution utility, or the customer. An electric service provider or aggregator shall not disseminate, sell, deliver or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.

(3) An electric service provider shall, upon the request of the customer or another electric service provider which has received authorization from the customer, submit to the requesting electric provider or to the customer directly, the monthly usage of the customer for the previous 12 months, or for as long as the electric service provider has provided service to the customer, whichever is shorter. The methods of authorization of release of customer specific information shall be those methods described in §25.474 of this title. A customer shall be entitled to request this information free of charge at least once every 12 months.

(4) Upon the request of a customer, an electric service provider shall notify a third person chosen by the customer of any pending disconnection of service or termination of contract for electric service with respect to the customer's account.

(5) This section shall not be interpreted to prevent an electric service provider's communication of proprietary customer information to the registration agent in order to effectuate a customer selection or change of an electric service provider or the customer's switch to the provider of last resort (POLR).

(6) An electric service provider may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, under terms approved by the commission.

§25.473. Non-English Language Requirements.

(a) Electric service providers. An electric service provider shall provide the following information to an applicant or a customer in English or Spanish, at the customer's designation. Additionally, if the electric service provider markets its products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

(1) all documents required by this subchapter including, but not limited to, applicant and customer rights, including Your Rights as a Customer disclosure, terms of service documents, bills, and bill notices;

(2) information on the availability of new services, discount programs, and promotions; and

(3) access to customer service including the restoration of electric service and billing inquiries.

(b) Aggregators. An aggregator shall provide the following information to an applicant or a customer in English or Spanish, at the customer's designation. Additionally, if the aggregator markets its products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

(1) terms of service documents, required by this subchapter;

(2) the availability of discount programs; and

(3) access to customer service.

(c) Prohibition on mixed language. Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions of the printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure shall be translated into that language. Printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures containing a single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosures in a different language are allowed.

§25.474. Selection or Change of Electric Service Provider.

(a) General purpose. An electric service provider shall not enroll a customer without obtaining the customer's express authorization and having that authorization verified consistent with subsection (c) of this section.

(b) Initial electric service provider selection process.

(1) Before the start of retail electric competition, the commission may issue to all customers an explanation of the electric service provider selection process and an electric service provider selection form. The form shall be on a postage-paid post card and shall:

(A) list all certified electric service providers in the IOU's certificated service area;

(B) allow a customer to designate one of the listed electric service providers as that person's provider of choice;

(C) allow the customer to receive information from designated electric service providers;

(D) allow a customer to designate whether they would like to be placed on the statewide Do Not Call list and indicate the fee for such placement; and

(E) be addressed to the registration agent.

(2) Any affiliate REP assigned to serve a customer due to non-selection by the customer shall issue to a customer by January 31, 2002:

(A) A terms of service document;

(B) Your Rights as a Customer disclosure; and

(C) an Electricity Facts label .

(c) General standards for authorizations and verifications.

(1) All authorizations and verifications shall be in plain, easily understood English or other language, if the underlying sales transaction was conducted in the other language. The entire authorization and verification shall be the same language.

(2) The specific service for which the customer's assent is being attained or verified shall be disclosed to the customer. Each service, including electric service and any other service offered by the

electric service provider shall be clearly identified and a separate authorization and verification obtained for each service.

(3) The specific service provider for which the customer's authorization is being attained and verified shall be disclosed to a customer. Any use of a name for the purposes of deception or to obtain a customer's authorization and verification based on confusion or inability to understand the import of the name of the electric service provider and the services offered is prohibited.

(4) Each authorization and verification shall affirmatively inquire as to the identity of the individual with the authority to change the customer's electric service provider and explain that only a customer in whose name electric service is billed can agree to a change in electric service provider.

(5) An electric service provider shall submit copies of its sales script, contract, terms of service document and any other materials used to obtain a customer's authorization or verification to the commission upon request.

(d) Required authorization disclosures. The authorization shall clearly and conspicuously disclose the following information contained in the electric service provider's contract or terms of service document for each product offered to the customer:

(1) the name of the new electric service provider;

(2) the ability of a customer to select to receive information in English, Spanish, or the language used in the marketing of service to the customer. The electric service provider shall provide a means of obtaining and recording a customer' language preference;

(3) price, stated in cents per kilowatt-hour for electric service;

(4) term or length of the contract or term of service;

(5) the presence or absence of early termination fees or penalties, and applicable amounts;

(6) any requirement to pay a deposit and the amount of that deposit;

(7) any fees to the customer for switching to the electric service provider; and

(8) the customer's right of cancellation without penalty and a statement that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched to the electric service provider.

(e) Verification requirements. A verification shall clearly:

(1) confirm the customer's billing name, address, and electric service identifier (ESI) or account number to be covered by the preferred electric service provider change order;

(2) confirm appropriate verification data, such as the customer's date of birth, the customer's mother's maiden name, or other voluntarily submitted information;

(3) confirm the decision to change from the current electric service provider to the new electric service provider; and

(4) confirm that the customer designates the new electric service provider to act as the customer's agent for the change of electric service provider.

(f) Methods of obtaining customer authorization and verification.

(1) Written authorization and verification. A written authorization and verification may include, but is not limited to, mailings, facsimiles, or direct enrollments from a customer for a change of electric service provider.

(A) A written authorization and verification shall not be combined with inducements of any kind on the same document, except that the written authorization and verification may be combined with a check as described by the clauses below:

(i) A check shall not contain any promotional language or material; and

(ii) A check shall contain on the front and back, in easily readable, bold-face type near the signature line, the following notice: "By signing this check, I am authorizing (name of electric service provider) to be my new electric service provider."

(B) The applicant's signature on a contract or other document which contains the materials terms and conditions of the service may constitute authorization and verification so long as the provisions of subsections (d) and (e) of this section are met.

(C) Before obtaining a signature from the applicant, an electric service provider shall provide each applicant a reasonable opportunity to read any written materials accompanying the contract or terms of service document and shall answer any and all questions posed by any applicant about information contained in the documents.

(D) Upon obtaining the applicant's signature, an electric service provider shall immediately provide the applicant a legible copy of the signed contract, the required terms of service document, and Your Rights as a Customer disclosure. If written solicitations by an electric service provider contain the terms of service document or contract, any tear-off portion that is submitted by the customer to the electric service provider to obtain electric service shall allow the customer to retain the terms of service document.

(2) Telephonic authorization and verification. An electric service provider that obtains a customer's authorization by means of a telephone conversation shall obtain independent third party verification of the customer's authorization prior to submitting an enrollment or change order. In addition to the requirements of this paragraph, both the authorization and the third party verification must adhere to the requirements of subsections (d) and (e) of this section.

(A) Additional authorization and verification requirements. Telephonic enrollment or change orders shall clearly:

(i) inform the customer at the beginning of a call that the call is being recorded. The entire authorization and verification conversation with the customer shall be recorded so that evidence of a customer's consent can be reviewed and investigated if a subsequent complaint is filed;

(ii) read any script in the language used to make the underlying sales transaction and proceed at a normal conversational speed using plain, easily, understood language;

(iii) The script and conversation shall proceed at a normal conversational speed and the name of the electric service provider to which the customer is being switched shall be stated in its entirety; and

(iv) Both the authorization and the verification agents must clearly state that the customer will have a right of cancellation without penalty and that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched by the electric service provider.

(B) Independent third party. An independent third party shall operate in a location physically separate from the electric service provider or the electric service provider's marketing agent and shall not:

(i) be owned, managed, or directly controlled by the electric service provider or the electric service provider's marketing agent; or

(ii) have financial incentive to confirm change orders.

(3) Internet enrollment. An electric service provider that offers Internet enrollment to applicants shall comply with the following minimum requirements:

(A) The electric service provider shall maintain an Internet website that is identified in its certificate application maintained on file at the commission. The website shall identify the legal name of the electric service provider, its address, telephone number, and Texas license number to sell electric service.

(B) The means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the electric service provider shall be by an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

(C) The electric service provider shall identify the terms of service document by a version number to ensure the ability to verify the particular agreement to which the applicant assents. The electric service provider shall make available a copy of the terms of service document, as required by §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that is agreed to by an applicant, on the electric service provider's Internet website. The terms of service document shall be accessible by the customer for the duration of the contract term offered to the customer.

(D) The Internet enrollment procedure shall prompt the applicant to print or save the terms of service document to which the applicant assents and provide an option to have a written terms of service document sent by regular mail.

(E) The electric service provider shall provide to the applicant a toll-free telephone number, Internet website address, and e-mail address for contacting the electric service provider throughout the duration of the customer's agreement.

(F) The electric service provider shall obtain verification that meets the standards of subsection (d) of this section, provide a statement with a box that must be checked by the applicant to indicate that the applicant has read and agrees to select the electric service provider to supply electric service, and the time and date of the applicant's enrollment. The applicant's enrollment shall be followed by a confirmation of the change of the applicant's electric service provider via e-mail, which confirmation shall include a conspicuous notice of the applicable right of cancellation and offer the applicant the option of exercising this right via toll-free telephone number, e-mail, Internet website, facsimile transmission, or regular mail.

(G) Applicant and/or customer authorizations and verifications must adhere to any state and federal guidelines governing the use of electronic signatures.

(4) Door-to-door sales. An electric service provider that engages in door-to-door marketing at a customer's residence, or personal solicitation at a public location (such as malls, fairs, or places of retail commercial activity) shall be subject to the following:

(A) The electric service provider shall comply with the standards set forth in subsection (e)(1) of this section.

(B) The electric service provider shall provide the disclosures and right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to- Door Sales (16 C.F.R. §429).

(C) The individual who represents the electric service provider shall wear a clear and conspicuous identification on the front of the individual's outer clothing that prominently displays the name of the electric service provider. The name displayed shall conform to the name on the electric service provider's certification obtained from the commission and the name that appears on all of the electric service provider's contracts and terms of service documents in possession.

(D) The electric service provider shall affirmatively explain that it is not a representative of the customer's transmission and distribution utility. The electric service provider's clothing and sales presentation shall be designed to avoid the impression by a reasonable customer that the individual represents the customer's transmission and distribution utility, affiliated retail electric provider (REP) or provider of last resort (POLR).

(5) Electronic authorization and verification. An electric service provider may obtain customer authorization and verification for a change in electric service provider by electronic authorization if the electric service provider:

(A) ensures that the electronic authorization confirms the information in subsections (d) and (e) of this section; and

(B) establishes one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a person calling the toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the automatic number identification (ANI).

(g) Record retention. An electric service provider shall maintain records of a customer authorization or verification for a change in electric service provider for 24 months and shall provide such records to the customer, if the customer challenges the change, and to the commission if it so requests.

(h) Right of cancellation. An electric service provider shall promptly provide the customer with the terms of service document after the customer has provided authorization to select the electric service provider pursuant to one of the methods set forth in this section. The electric service provider shall offer the customer a right to cancel the contract without penalty or fee of any kind for a period of three business days after the customer's receipt of the terms of service document and acceptance of the electric service provider's offer. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service (U.S. mail) will be received by the customer within four business days.

(i) Submission of customer's selection to the registration agent. An electric service provider shall not submit a customer's selection of the electric service provider to the registration agent until the electric service provider has provided the customer with the right of cancellation and the three business day period has passed. This time period shall be no earlier than seven business days after the electric service provider has delivered the terms of service document to the customer or deposited the statement in the U.S. mail.

(j) Duty of the registration agent. When the registration agent receives a switch request from an electric service provider, the registration agent shall:

(1) process that request promptly;

(2) send the customer an enrollment notification notice. The notice shall:

(A) identify the electric service provider that submitted the request;

(B) inform the customer that his or her electric service will be changed unless the customer cancels the switch by the date stated in the notice;

(C) provide a cancellation date that shall be no less than three business days after the customer receives the notice. The registration agent shall assume no less than four business days for the notice to reach a customer by U.S. mail;

(D) provide instructions for canceling the switch, including the telephone number, facsimile machine number, and e-mail address that the customer may use to cancel the switch;

(E) contain the following statement: "Retail electric providers are prohibited by law from switching your electric service without your permission, a practice commonly known as 'slamming.' If you have been slammed, you can prevent the switch from occurring by contacting (name of the electric service provider). You may also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, (512) 937-7120 or in Texas (toll-free) 1-888-782- 8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7163."

(F) contain a toll-free number and statement in Spanish advising customers that information regarding this notice can be obtained in Spanish by calling the toll-free telephone number provided. Customers calling this telephone number shall be advised of the information contained in subparagraphs (A) through (E) of this paragraph; and

(3) implement the change effective with the customer's next meter reading and bill, if the customer does not cancel the pending selection or change of electric service provider within the specified cancellation period.

(k) Customer's switch to provider of last resort (POLR). The methods of customer authorization, customer verification, and rights of cancellation are not applicable when the customer's electric service is changed to the POLR by the actions of an entity other than the POLR.

(l) Fees. An electric service provider shall not charge a fee to a customer to select, switch or enroll with the electric service provider unless the customer requests a switch or enrollment that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for this off-cycle meter reading. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent.

(m) Transferring customers from one electric service provider to another.

(1) Any electric service provider that will acquire customers from another electric service provider due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

(A) identify the current and acquiring electric service provider;

(B) explain why the customer will not be able to remain with the current electric service provider;

(C) explain that the customer has a choice of selecting an electric service provider and may select the acquiring electric service provider or any other electric service provider;

(D) explain that if the customer wants another electric service provider, the customer should contact that electric service provider;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring electric service provider;

(G) provide the Electricity Facts label of the acquiring electric service provider; and

(H) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring electric service provider shall provide the commission with a copy of the notice when it is sent to customers.

(n) Complaints alleging unauthorized change of electric service provider (Slamming). A customer may file a complaint, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) with the commission against an electric service provider for any reasons related to the provisions of this section.

(1) Electric service provider's response to complaint. After review of a customer's complaint, the commission shall forward the complaint to the unauthorized electric service provider. The electric service provider is responsible for performing the following upon receiving a complaint:

(A) take all actions within its control to facilitate the customer's prompt return to their original electric service provider within three days;

(B) cease any collections activities related to the switch until the complaint has been resolved by the commission; and

(C) respond to the commission within 21 calendar days after receiving the complaint. The electric service provider's response shall include the following:

(i) all documentation related to the authorization and verification used to switch the customer's service; and

(ii) all corrective actions taken as required by paragraph (3) of this subsection, if the switch in service was not verified in accordance with subsections (c), (d) and (e) of this section.

(2) Commission investigation. The commission shall review all of the information related to the complaint, including the electric service provider's response, and make a determination of whether the electric service provider complied with the requirements of this section. The commission shall inform the complainant and the electric service provider of the results of the investigation and identify any additional corrective actions that may be required of the electric service provider or the customer's obligation to pay any charges related to the authorized switch.

(3) Responsibilities of the electric service provider that initiated the change. If a customer's electric service provider is changed without authorization consistent with this section, the electric service provider that initiated the unauthorized change shall:

(A) pay all charges associated with returning the customer to the original electric service provider within five business days of the customer's request;

(B) provide all billing records and usage history information to the original electric service provider related to the unauthorized change of services within ten business days of the customer's request;

(C) pay the original electric service provider the amount it would have received from the customer if the unauthorized change had not occurred, within 30 days of the original electric service provider's request for payment;

(D) refund any amounts paid by the customer to the customer within 30 days of the customer's request; and

(E) remove all unpaid charges.

(4) Responsibilities of the original electric service provider. The original electric service provider shall:

(A) inform the electric service provider that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (3)(C) of this subsection;

(B) provide to the customer all benefits or gifts associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in electric service provider that contains:

(i) the name of the electric service provider that initiated the unauthorized change;

(ii) the account number(s) affected by the unauthorized change;

(iii) the date the customer asked the unauthorized electric service provider to return the customer to the original electric service provider; and

(iv) the date the customer was returned to the original electric service provider; and

(D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(o) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes. An electric service provider shall provide a copy of records maintained under the requirements of subsections (c), (d), (e), (f) and (n) of this section to the commission upon request.

(2) Administrative penalties. If the commission finds that an electric service provider is in violation of this section, the commission shall order the electric service provider to take corrective action as necessary, and the electric service provider may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) Certificate revocation. If the commission finds that an electric service provider is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the electric service provider, thereby denying the electric service provider the right to provide service in this state.

(4) Coordination with the office of the attorney general. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

§25.475. Information Disclosures to Residential and Small Commercial Customers.

(a) General disclosure requirements.

(1) All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by electric service providers and aggregators shall be provided in a readable format, written in clear, plain, easily understood language.

(2) Printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by electric service providers and aggregators shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(3) An electric service provider or aggregator shall, upon receipt of a license or certificate from the commission, include its certificated name, the number of the license, plan name, and name of the product offered in all of its printed advertisements, electronic advertising over the Internet, direct marketing materials, terms of service documents, and Your Rights as a Customer disclosures.

(b) Advertising and marketing materials. Printed advertisements, direct marketing materials, and electronic advertising over the Internet of an electric service provider or an aggregator that are directed at residential and small commercial customers shall conform to all of the requirements of subsection (a) of this section.

(1) Except as otherwise provided by this section, advertisements and marketing materials, other than television or radio, that make any claims regarding price, cost competitiveness, or environmental quality shall include the Electricity Facts label. In lieu of including an Electricity Facts label, the following statement may be provided: "For a copy of important standardized information and contract terms regarding this product, call (name, telephone number, and website (if available) of the electric service provider)." An electric service provider shall provide a terms of service document, which includes an Electricity Facts label, relating to the service or product being advertised to each person who contacts the electric service provider in response to this statement.

(2) An electric service provider shall include the following statement in any television or radio advertisement that makes a claim about price, cost competitiveness, or environmental quality for an electricity product of the electric service provider: "You can obtain information that will allow you to compare the price and terms of this product with other offers. Call (name, telephone number and website (if available) of the electric service provider)." An electric service provider shall provide a terms of service document, which includes an Electricity Facts label , to each person who contacts the electric service provider in response to this statement.

(c) Terms of service document.

(1) For each service or product that it offers to residential or small commercial customers, an electric service provider shall create a terms of service document. An electric service provider shall assign a number to each version of its terms of service document.

(2) The terms of service document shall be provided to new customers before and at any time that the electric service provider seeks to change the material terms and conditions of service with its customers. Upon request, customers are entitled to receive an additional copy of the terms of service document once annually.

(3) For the purposes of market monitoring and providing the public with comparative information about electric service providers' standard contract offers, an electric service provider shall furnish its terms of service documents to the commission at regular intervals designated by the commission's Customer Protection Division. The information may be transmitted by e-mail or facsimile within five calendar days of the request.

(4) An electric service provider shall maintain a copy of each customer's terms of service document for two years after the terms of service expire.

(5) The following information shall be conspicuously presented in the terms of service document:

(A) The electric service provider's name, mailing address, Internet website address, and a toll-free telephone number (with hours of operation and time-zone reference);

(B) The Electricity Facts label as specified in subsection (e) of this section;

(C) A statement as to whether there is a minimum contract term;

(D) A statement as to whether there are penalties to cancel service before the end of the minimum term of the contract and the amount of those penalties;

(E) If the electric service provider requires deposits from its customers, a description of the conditions that will trigger a request for a deposit, the maximum amount of the deposit, a statement that interest will be paid on the deposit including the amount of the interest that will be paid, and the conditions under which the customer may obtain a refund of a deposit;

(F) The itemization of any charges which must be paid by the customer before service is initiated or switched;

(G) The itemization of any services that are included in the customer's contract, including:

(i) the specific methods and rates by which the customer will be charged for electric service; and

(ii) the cost for each service or product other than electric service, or, if the electric service provider has bundled the charges for these other services together, the total cost of all charges for services other than electric service;

(H) The itemization of any charges that may be imposed on the customer during the period of the contract for default, late payment, switching fees, late fees, fees that may be charged to the customer for returned checks, fees charge for early termination of the contract, collection costs imposed on the customer if the customer defaults, and any other non-recurring fees and charges;

(I) The policies of the electric service provider regarding payment arrangements, late payments, payments in dispute and defaults by the customer;

(J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations and conditions of the contract for services offered by the electric service provider;

(K) In a conspicuous and separate paragraph or box:

(i) A description of the right of a new customer to cancel a contract without fee or penalty of any kind within three business days after receiving the terms of service document sent to the customer after the electric service provider has obtained the customer's authorization to provide service to the customer;

(ii) Detailed instructions for canceling a contract, including the telephone number, facsimile machine number and e-mail address which the customer may use to cancel the contract; and

(iii) Any information on automatic contract renewal that applies; and

(L) A statement informing the customer that the electric service provider cannot deny service or require a prepayment or deposit for service based on an applicant's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of an applicant or customer in a economically distressed geographic area, or qualification for low income or energy efficiency services;

(M) A statement that bill payment assistance for qualified low income customers is offered by the electric service provider (if any such assistance is offered), and that additional information may be obtained by contacting the local office of the electric service provider, the Texas Department of Housing and Community Affairs, or the Public Utility Commission of Texas. The main office telephone number (toll-free telephone number, if available) and address for each state agency shall also be provided.

(N) A statement that rate reductions for qualified low income customers are offered by the electric service provider.

(d) Minimum notice of changes in terms and conditions, contract, and terms of service.

(1) Change in terms and conditions. An electric service provider shall provide written notice to its customers 45 days in advance of any material change in the terms of service document. The notice shall clearly specify what actions the customer needs to take to terminate the contract, the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding the expiration of your electric service contract."

(2) Automatic renewal clauses. An electric service provider may utilize an automatic renewal clause. Any contract renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 30 days and such clause may be repeatedly activated unless cancelled by the customer or the electric service provider materially changes the terms of service.

(e) Electricity Facts label.

(1) Pricing disclosures. Pricing information disclosed by an electric service provider in an Electricity Facts label shall include:

(A) For the total cost of electric services, exclusive of applicable taxes:

(i) If the billing is based on rates that will not vary by season or time of day, the average price for electric service reflecting all recurring charges, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

(I) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and

(II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month; and

(ii) If the billing is based on rates that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

(I) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and

(II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month;

(iii) If an electric service provider combines the charges for electric service with charges for any other product, the electric service provider shall:

(I) If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and

(II) If the electric service provider does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.

(B) If the pricing plan envisions prices which will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns - your average price for electric service will vary according to when you use electricity. See the terms of service document for actual prices."

(C) If the pricing plan envisions prices which will vary during the term of the contract because of factors other than season and time of day, the statement: "This price disclosure is an example based on average contract prices - your average price for electric service will vary according to your usage and (insert description of the basis for and the frequency of price changes during the contract period). See the terms of service document for actual prices."

(D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed; and

(E) If the price of electric service is based on the season or time of day, the on-peak seasons or times and the associated rates.

(2) Contract terms disclosures. Specific contract terms that must be disclosed on the Electricity Facts label are:

(A) The minimum contract term, if any; and

(B) Early termination penalties, if any.

(3) Fuel mix disclosures. The Electricity Facts label shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the electric service provider in Texas. This break-down shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydro power, solar power and wind power); and other known sources. Electricity for which the fuel source is unknown shall be shown in a separate category labeled "unknown." Fuel mix information shall be based on generation data for the most recent calendar year.

(A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<.

(B) Any source of electricity that is not used shall be listed in the table and depicted as "0%".

(4) Air emissions disclosures. The Electricity Facts label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide and particulate emissions and high-level nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Information regarding emissions of nitrogen oxides, sulfur dioxide and particulates shall be based on the most recent annual Point Source Air Emissions Inventory published by the Texas Natural Resource Conservation Commission (see 30 TAC §101.10). Data on carbon dioxide and radioactive waste shall cover the same time period as that covered by the most recent Point Source Air Emissions Inventory.

(A) The carbon dioxide emissions, nitrogen oxide emissions, and sulfur dioxide emissions shall be calculated in pounds per 1,000 kilowatt- hours (lbs/1,000 kWh), and expressed as a percentage of the statewide system average.

(B) The high-level nuclear waste shall be calculated in pounds of high- level nuclear waste per 1,000 kilowatt-hours (lbs/1,000 kWh), and expressed as a percentage of the statewide system average.

(C) The commission shall calculate the statewide system average to be used in accordance with this subsection.

(D) The chart shall include a footnote to disclose the percentage of total electrical power supplied for which the electric service provider does not know the amount of emissions or nuclear waste.

(5) Renewable energy claims. An electric service provider may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(6) Format of Electricity Facts label. Each Electricity Fact label shall be printed in type no smaller than ten points in size and shall be formatted as shown below:
Figure: 16 TAC §25.475(e)(6)

(7) Distribution of Electricity Facts label. Beginning July 1, 2002, an electric service provider shall distribute its Electricity Facts label to its customers with its January and July billings (or as a separate bill insert). Additionally, electric service providers shall provide the commission with an electronic version of each Electricity Facts label the provider distributes to customers. The commission shall make each label available to the public in a non-preferential manner over the Internet.

(f) Your Rights as a Customer disclosure. In addition to the terms of service document required by this section, an electric service provider shall develop a separate disclosure statement for residential customers and small commercial customers entitled Your Rights as a Customer that summarizes the standard customer protections provided by the rules in this subchapter.

(1) This disclosure shall initially be distributed at the same time as the electric service provider's terms of service document and shall not be contradicted by any provision of the electric service provider's terms of service document.

(2) The electric service provider shall distribute an update of this disclosure once annually to its customers.

(3) Each electric service provider's Your Rights as a Customer disclosure shall be subject to review and approval by the commission.

(4) The disclosure shall inform the customer of the following :

(A) The electric service provider's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);

(B) The customer's right to have his or her meter tested pursuant to §25.124 of this title (relating to Meter Testing) and the customer's right to be instructed by the electric service provider how to read his or her meter, if applicable;

(C) Disclosures concerning the customer's ability to dispute unauthorized charges from appearing on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(D) Notice of any special services such as readers or notices in Braille, TDD services for hearing impaired customers;

(E) Special actions or programs available to those customers with physical disabilities, including customers who have a critical need for electric service to maintain life support systems;

(F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(G) Cancellation of terms of service without penalty;

(H) Slamming pursuant to §25.474(n) of this title (relating to Selection or Change of Electric Service Provider);

(I) Termination of service protections pursuant to §25.482 of this title (relating to Termination of Contract) or disconnection of service by the provider of last resort (POLR) pursuant to §25.483 of this title (relating to Disconnection of Service);

(J) Availability of financial and energy assistance programs;

(K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List);

(L) Availability of discounts for qualified low income customers;

(M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);

(N) Procedures for reporting outages;

(O) Privacy rights regarding customer specific information as defined by §25.472 of this title (relating to Privacy of Customer Information);

(P) Availability of POLR service and how to contact the POLR, including the POLR's toll-free telephone number; and

(Q) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection.

§25.476. Request for Service.

(a) New service requests. A retail electric provider (REP) shall initiate the switching process for a customer within three days of the date and conditions agreed to by the customer and the REP. The customer shall be informed of the actual date that the customer will begin receiving service from the new provider and of any delays in meeting that date.

(b) Affiliated REP or provider of last resort (POLR). An affiliated REP or POLR shall initiate service under the terms and conditions reflected in the tariffs of the transmission and distribution utility within whose geographic service territory the customer is located. The date shall be disclosed to customers and service shall be installed within three days of the date disclosed to a customer.

§25.477. Refusal of Service.

(a) Acceptable reasons to refuse service. An electric service provider may refuse to provide electric service to an applicant for one or more of the reasons specified in this subsection:

(1) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the applicant's facilities do not comply with all applicable state and municipal regulations.

(2) Use of prohibited equipment or attachments. The applicant fails to comply with the transmission and distribution utility's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(3) Intent to deceive. The applicant applies for service at a location where another customer received, or continues to receive, service and the other customer's bill from the electric service provider is unpaid at that location, and the service provider can prove the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the electric service provider.

(4) For indebtedness. The applicant owes a bona fide debt to the electric service provider for the same kind of service as that being requested. An affiliated retail electric provider (REP) or provider of last resort (POLR) shall offer the applicant an opportunity to pay the outstanding debt to receive service. In the event an applicant's indebtedness is in dispute, the applicant shall be provided service upon paying a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).

(5) For indebtedness to the POLR. An applicant of any electric service provider owes a bona fide debt to the POLR for the same kind of service as that being requested from the electric service provider. An affiliate REP or POLR shall offer the applicant an opportunity to pay the outstanding debt to receive service. In the event an applicant's indebtedness is in dispute, the applicant shall be provided service upon paying a deposit pursuant to §25.478 of this title.

(6) Failure to pay guarantee. An applicant has acted as a guarantor for another customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.

(7) Refusal to comply with credit requirements. The applicant refuses to comply with the credit and deposit requirements set forth in §25.478 of this title.

(8) Returning customer. An affiliate REP can refuse to provide service to an applicant who was served by the affiliate REP within the prior 15 months if the applicant is unwilling to accept a one-year term of service with the affiliate REP.

(9) Other acceptable reasons to refuse service. An electric service provider that is not an affiliated REP or POLR may refuse to provide electric service to an applicant for one or more of the reasons specified in paragraph (1) of this subsection or for any other reason that is not otherwise discriminatory pursuant to §25.471 of this title (relating to General Provisions of Customer Protection Rules).

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

(1) delinquency in payment for electric service by a previous occupant of the premises to be served;

(2) failure to pay for any charge that is not related to the provision of electric service, including a competitive energy service, merchandise, or other services which are optional and not included in the electric service provided;

(3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; or

(4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the electric service provider has reasonable and specific grounds to believe that the applicant has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.

(c) Disclosure upon refusal of service.

(1) An electric service provider that denies electric service to an applicant shall inform the customer in writing of the reason for the denial within five business days. This disclosure may be combined with any disclosures required by applicable federal or state law.

(2) This disclosure is not required when the electric service provider notifies the customer orally that the customer is not located in a geographic area served by the electric service provider, does not have the type of usage characteristics that is served by the electric service provider, or is not part of a customer class served by the electric service provider.

(3) Any disclosure pursuant to this section shall inform the customer:

(A) of the reasons for the refusal of service;

(B) that the applicant may be eligible for service if the applicant remedies the reason(s) for refusal and complies with the electric service provider's terms and conditions of service;

(C) that the electric service provider cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;

(D) that the applicant who is dissatisfied may file a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and

(E) of the availability and existence of POLR service and the toll-free telephone number to contact the POLR.

§25.478. Credit Requirements and Deposits.

(a) Credit requirements for permanent residential applicants. An electric service provider may require residential applicants to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential applicant or customer of an affiliated retail electric provider (REP) or provider of last resort (POLR) can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (D) of this paragraph. Other electric service providers may establish other criteria by which an applicant can demonstrate satisfactory credit, as long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) The residential applicant:

(i) has been a customer of any electric service provider or the transmission and distribution utility (prior to 2002) within the two years prior to the applicant's request for electric service;

(ii) is not delinquent in payment of any such electric service account;

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once;

(iv) did not have service disconnected for nonpayment; and

(v) obtains a letter of credit history from the applicant's previous service provider. An electric service provider shall maintain payment history information for two years after electric service has been terminated to a customer in order to be able to provide credit history information at the request of the former customer.

(B) The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(i) generally acceptable credit cards;

(ii) letters of credit reference;

(iii) the names of credit references which may be quickly and inexpensively contacted by the service provider; or

(iv) ownership of substantial equity that is easily liquidated.

(C) The residential applicant is 65 years of age or older and does not have an outstanding account balance incurred within the last two years with the transmission and distribution utility (prior to 2002) or any other REP for the same type of service applied for.

(D) The residential applicant is a qualified low-income person as defined in the Public Utility Regulatory Act (PURA) §39.903(l) or is a certified victim of family violence (as defined in §71.004 of the Texas Family Code) who is willing to adhere to the following terms, in lieu of paying an otherwise required deposit, in order to receive electric service:

(i) enter into a pre-payment arrangement for a period of one year; and

(ii) receive service from the affiliate REP or POLR

(E) Pursuant to PURA §39.107(g), a REP who requires pre-payment by a metered residential customer as a condition of initiating service may not charge the customer an amount for electric service that is higher than the price charged by the provider of last resort.

(4) If satisfactory credit cannot be demonstrated by the residential applicant of an affiliate REP or POLR using these criteria, the applicant may be required to pay a deposit pursuant to subsections (c) and (d) of this section.

(b) Credit requirements for non-residential applicants. An electric service provider may establish nondiscriminatory criteria to evaluate the credit requirements for non-residential applicants and apply those criteria in a nondiscriminatory manner.

(c) Initial deposits.

(1) An electric service provider shall offer a residential applicant or customer who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit. The letter of guarantee may be conditioned on the agreement of the guarantor to become or remain a customer of the electric service provider for the term during

which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the electric service provider, the electric service provider may require the customer who was obligated to pay the initial deposit to pay such deposit as a condition of continuing the contract for service.

(2) An affiliate REP or POLR shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written termination notice (or, in the case of the POLR, a notice of disconnection of service) that requests such deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(d) Additional deposits by existing customers.

(1) During the first 12 months of a residential customer's service, an affiliate REP or POLR may request an additional deposit if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings; and

(B) a termination notice has been issued (or, in the case of the POLR, a notice of disconnection of service) for the account within the previous 12 months.

(2) A customer shall pay an additional deposit within ten days after the affiliate REP has issued a termination of service notice (or, in the case of the POLR, a notice of disconnection of service) and requested the additional deposit.

(3) Instead of an additional deposit, a residential customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(4) An affiliate REP may terminate service (or in the case of the POLR, disconnect service) if the additional deposit is not paid within ten days of the request, provided a written termination or disconnection notice has been issued to the customer. A termination or disconnection notice may be issued concurrently with either the written request for the additional deposit or current usage payment. An affiliate REP may initiate a "drop" request to the registration agent if the customer does not pay the additional deposit demanded by the affiliate REP as a condition of continuing service. However, the affiliate REP is not required to request an additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document.

(e) Deposits for temporary or seasonal service and for weekend residences. An electric service provider may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.

(f) Amount of deposit. The total of all deposits, initial and additional, required by an electric service provider from any residential customer shall not exceed an amount equivalent to one-sixth of the estimated annual billing. The estimated annual billing shall only include charges for electric service charges that are disclosed in the electric service provider's terms of service document provided to the customer.

(g) Interest on deposits. An electric service provider that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the electric service provider keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(h) Notification to customers. When an electric service provider requires an applicant or customer to pay a deposit, the electric service provider shall provide the applicant or customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the electric service provider's terms of service document.

(i) Records of deposits.

(1) An electric service provider that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) The electric service provider that collects a deposit shall, upon the request of the customer, issue a receipt of deposit to each applicant paying a deposit and shall provide means for a depositor to establish a claim if the receipt is lost.

(3) The electric service provider shall maintain a record of each unclaimed deposit for at least four years.

(4) The electric service provider shall make a reasonable effort to return unclaimed deposits.

(j) Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any electric service provider, if applicable, shall conform to these minimum requirements:

(1) A guarantee agreement between an electric service provider and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the applicant's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The electric service provider may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the electric service provider during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the electric service provider, the provider may treat the guarantee agreement as in default and demand the amount of the cash deposit from the residential customer as a condition of continuing service.

(5) The electric service provider shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The electric service provider shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The electric service provider may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The electric service provider may initiate termination of service (or disconnection of service for the POLR) to the guarantor for nonpayment of the guaranteed amount only if the termination or service (or, where applicable, the disconnection of service) was disclosed in the terms of service document, and only after proper notice as described by paragraph (5) of this subsection, and §25.482 of this title (relating to Termination of Contract) or §25.483 of this title (relating to Disconnection of Service).

(k) Refunding deposits and voiding letters of guarantee.

(1) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service terminated (or, where applicable, disconnected by the POLR) for nonpayment of a bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the electric service provider shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee or provide written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.

(2) If service is not connected, or is terminated or disconnected, the electric service provider shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided, or refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the electric service provider shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer and/or guarantor moves or changes the address where service is provided, as long as the customer and/or guarantor remain a customer of the electric service provider.

(l) Re-establishment of credit. Every applicant who previously has been a customer of the electric service provider and whose service has been terminated or disconnected for nonpayment of bills or theft of service (meter tampering or bypassing of meter) may be required, before service is reconnected, to pay all amounts due to the electric service provider or execute a deferred payment agreement, if offered, and reestablish credit. The electric service provider shall prove the amount of electric service received, but not paid for, and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of electric service restoration to such premise.

(m) Upon sale or transfer of company. Upon the sale or transfer of an electric service provider or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records, provided that the deposits were not returned to the customers and the legal successor accepts transfer of such deposits.

§25.479. Issuance and Format of Bills.

(a) Frequency and delivery of bills. An electric service provider shall issue bills monthly, unless service is provided for a period less than one month. Bills shall be issued as promptly as possible after reading meters or obtaining the meter usage from the transmission and distribution utility. Bills shall be issued to residential customers in writing and delivered via the United States Postal Service (U.S. mail), unless the customer has enrolled with the electric service provider by means of the Internet and has specifically agreed to the issuance of an electronic bill or statement.

(b) Bill content. Each customer's bill shall include all the following information:

(1) The name and address of the electric service provider and the number of the license issued to the electric service provider by the commission;

(2) A toll-free telephone number, in bold-face type, that the customer can call during specified hours for inquiries and to make complaints about the bill; and

(3) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system.

(4) The service address, electric service identifier (ESI), and account number of the customer;

(5) The service period for which the bill is rendered;

(6) The date on which the bill was issued;

(7) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the electric service provider to avoid a late charge or other collection action;

(8) The current charges for electric service, exclusive of applicable taxes, and a separate calculation of the average unit price of the current charge for electric service for the current billing period, labeled, "The average price you paid for electric service this month." This calculation shall reflect all fixed and variable recurring charges, but not including any nonrecurring credits, which is expressed as a cents per kilowatt-hour rounded to the nearest one-tenth of one cent;

(9) The identification and itemization of recurring charges other than for electric service;

(10) The itemization and amount included in the amount due for any other non- recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the electric service provider's terms of service document provided to the customer;

(11) The total current charges, balances from the preceding bill, payments made by the customer since the preceding bill, and the total amount due;

(12) The beginning and ending meter readings; the kind and number of units measured, whether the bill was issued based on estimated usage, and any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;

(13) Any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the electric service provider as required by §25.478 of this title (relating to Credit Requirements and Deposits);

(14) The customer's usage for the prior 12 billing periods or a statement that the customer may obtain a 12-month usage history from the electric service provider at no cost once during any calendar year;

(15) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(16) Notification of any changes in the customer's rates or charges due to the operation of a variable rate feature previously disclosed by the electric service provider in the customer's terms of service document; and

(17) If the electric service provider has presented its electric service charges in an unbundled fashion, it shall use the following terms as defined by the commission: "transmission and distribution service"; "generation service"; "System Benefit Fund"; "transition charge"; and "competition transition charge".

(c) Public service notices. An electric service provider shall, as required by the commission, provide brief public service notices to its customers. The electric service provider shall provide these public service notices to its customers on its billing statements, as an insert in its billing statement, or by electronic communication, as required by the commission.

(d) Estimated bills. If the electric service provider is unable to issue a bill based on actual meter reading due to the failure of the transmission and distribution utility to obtain or transmit a meter reading to the electric service provider on a timely basis, the electric service provider may issue a bill based on an estimated reading and inform the customer of the reason for the issuance of the estimated bill.

(e) Record retention. An electric service provider shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given period. Copies of a customer's billing records may be obtained by that customer on request.

(f) Transfer of delinquent balances. If the customer has an outstanding balance owed to the customer's current electric service provider that is due from a previous account in the same customer class, then the customer's current electric service provider may transfer that balance to the customer's current account. The delinquent balance and specific account or address shall be identified as such on the bill.

(g) Allocation of partial payments. An electric service provider shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the amount due for other services billed by the electric service provider.

§25.480. Bill Payment and Adjustments.

(a) Bill due date. An electric service provider shall state a payment due date on the bill which shall not be less than 16 days after issuance. The issuance date is the issuance date on the bill or, if there is no issuance date on the bill, the postmark date on the envelope. A payment for electric service is delinquent if not received by the electric service provider or at the electric service provider's authorized payment agency by the close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next business day after the sixteenth day.

(b) Penalty on delinquent bills for electric service. A one-time penalty not to exceed 5.0% may be charged on a delinquent commercial or industrial bill. No penalty may be applied to a residential bill. The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. A bill issued to a state agency, as defined in Chapter 2251 of the Government Code, shall be due and bear interest if overdue as provided in Chapter 2251.

(c) Overbilling. If charges are found to be higher than authorized in the electric service provider's terms and conditions for service, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the electric service provider corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the electric service provider does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission each year.

(A) Interest on overcharges that are not adjusted by the electric service provider within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the bill in error.

(B) All interest shall be compounded monthly based on the annual rate.

(C) Interest shall not apply to leveling plans or estimated billings.

(d) Underbilling. If charges are found to be lower than authorized by the electric service provider's terms and conditions of service, or if the electric service provider failed to bill the customer for service, then the customer's bill may be corrected.

(1) The electric service provider may backbill the customer for the amount that was underbilled. The backbilling shall not include charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.

(2) The electric service provider may terminate service, or disconnect service if the provider of last resort (POLR), if the customer fails to pay underbilled charges within a reasonable time.

(3) If the underbilling is $50 or more, the electric service provider shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(4) The electric service provider shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer, as defined in §25.126 of this title (relating to Meter Tampering). Interest on underbilled amounts shall be compounded monthly at the annual rate. Interest shall accrue from the day the customer is found to have first stolen (tampered, bypassed or diverted) the service.

(e) Disputed bills. If there is a dispute between a customer and a provider about the electric service provider's bill for service, the electric service provider shall promptly investigate and report the results to the customer. The provider shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

(f) Notice of alternate payment programs or payment assistance. When a customer contacts an electric service provider and indicates inability to pay a bill or a need for assistance with the bill payment, the electric service provider shall inform the customer of all alternative payment and payment assistance programs that are offered by or

available from the electric service provider, such as deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each. In addition, an electric service provider shall inform the customer of the availability of POLR service and how to obtain this service.

(g) Level and average payment plans. An electric service provider is encouraged to offer level or average payment plans to their customers. An affiliated retail electric provider (REP) or POLR shall offer one or more level or average payment plans. An electric service provider may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan.

(h) Payment arrangements. A payment arrangement is any agreement between the electric service provider and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the electric service provider issued a termination notice (or in the case of the POLR, a disconnection notice) before the payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated (or disconnected in the case of the POLR) after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice. An electric service provider may "drop" terminated customers to the POLR by notifying the registration agent.

(i) Deferred payment plans. A deferred payment plan is any written arrangement between the electric service provider and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the electric service provider.

(1) Electric service providers are encouraged to offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.

(2) Electric service providers are required to offer deferred payment plans to customers who have been underbilled, pursuant to subsection (d) of this section.

(3) An affiliated REP or POLR is required to offer such plans unless the customer:

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

(B) has received service from the affiliated REP or POLR for less than three months, and the customer lacks:

(i) sufficient credit; or

(ii) a satisfactory history of payment for electric service from a previous electric service provider (or its predecessor transmission and distribution utility).

(4) Any deferred payment plans offered by an electric service provider shall be implemented in a non-discriminatory manner, according to the provisions of this subsection.

(5) Every deferred payment plan offered by an electric service provider:

(A) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact your service provider immediately and do not sign this contract. If you do not contact the service provider, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the service provider's failure or refusal to comply with the terms of this agreement." In addition, where the customer and the electric service provider representative or agent meet in person, the representative shall read the preceding statement to the customer. The service provider shall provide information to the customer in English or Spanish as necessary to make the preceding boldface language understandable to the customer;

(B) may include a 5.0% penalty for late payment but shall not include a finance charge;

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

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

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

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

(G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(b)(5) of this title (relating to General Provisions of Customer Protection Rules);

(H) shall be signed by the customer and a copy of the signed plan shall be provided to the customer. If the agreement is made over the telephone, then the electric service provider shall send a copy of the plan to the customer for signature; and

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

(6) An electric service provider may pursue termination of service (or disconnection of service in the case of the POLR) when a customer does not meet the terms of a deferred payment plan. However, termination or disconnection shall not be performed until appropriate notice has been issued pursuant to §25.483 of this title (relating to Disconnection of Service) for the POLR or §25.482 of this title (relating to Termination of Contract) for other electric service providers to the customer indicating that the customer has not met the terms of the plan. The electric service provider may renegotiate the deferred payment plan agreement prior to disconnection. If the customer did not sign the deferred payment plan, and is not otherwise fulfilling the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.

§25.481. Unauthorized Charges.

(a) An electric service provider shall not charge a customer for a product or service without the customer's express authorization. An electric service provider may obtain a customer's authorization for a specific product or service by disclosing the itemized service in the provider's terms of service document for a new customer. An electric service provider may obtain a customer's authorization for an additional product or service to appear on the bill for existing customers by using any of the methods set forth in §25.474 of this title (relating to Selection or Change of Electric Service Provider).

(b) An electric service provider shall remove any unauthorized charge from the customer's bill no later than 45 days after a charge is

determined to be unauthorized and refund or credit to the customer all money that has been paid by the customer for any unauthorized charge.

(c) An electric service provider shall not terminate or disconnect service (as appropriate) to any customer for nonpayment of an unauthorized charge or take any adverse credit action, including the filing of a credit report, against a customer for nonpayment of an unauthorized charge. This paragraph does not apply to undisputed charges or charges ultimately resolved against the customer.

(d) If an electric service provider's bill includes charges other than those of the electric service provider, the electric service provider shall include the following notice on the customer's terms of service document (for new customers) and to all existing customers (either on the bill or in a separate bill insert) at least once per year: "Placing charges on your electric service bill for other products or services without your authorization is known as "cramming" and is prohibited by law. If you believe that any charge not related to the provisioning of electric service has not been authorized by you, call us immediately and request us to investigate this charge. We cannot terminate your service for disputing or refusing to pay for an unauthorized charge. We will investigate and, within 45 days, we will either remove the charge and reimburse you for prior payments made by you, or submit evidence of your specific authorization for this charge. If you are dissatisfied with our investigation, you may file an informal complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(e) An electric service provider shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric service bill, has notified the electric service provider of the unauthorized charge, and the charge was determined to be unauthorized. The record shall contain:

(1) The name of the service provider that offered the product or service;

(2) The date the customer requested the electric service provider to remove the unauthorized charge from the customer's bill;

(3) the date the unauthorized charge was removed from the customer's bill; and

(4) the date and amount the customer was refunded or credited with any money that the customer had paid for the authorized charge.

§25.482. Termination of Contract.

(a) Termination policy. An electric service provider can terminate its contract with a customer and, if no other electric service provider extends service to that customer, the customer may default to the service offered by the provider of last resort. If an electric service provider chooses to terminate its contract with a customer, it shall follow the procedures below, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require an electric service provider to terminate its contract with a customer.

(b) Termination notices. Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) an electric service provider may issue a notice of termination of contract. Any termination notice shall:

(1) not be issued before the first day after the bill is due, to enable the electric service provider to determine whether the payment was received by the due date. Payment of the delinquent bill at the electric service provider's authorized payment agency is considered payment to the electric service provider.

(2) be a separate mailing or hand delivered with a stated date of termination with the words "termination notice" or similar language prominently displayed.

(3) have a termination date that is not a holiday or weekend day and that is not less than ten days after the notice is issued.

(c) Contents of termination notice. Any termination notice shall include the following information:

(1) The reason for the termination of the contract;

(2) The actions, if any, that the customer may take to avoid the termination of the contract;

(3) If the customer is in default, the amount of all fees or charges which will be assessed against the customer as a result of the early termination of the contract, if any, as set forth in the electric service provider's terms of service document provided to the customer;

(4) The amount overdue, if applicable to the purpose of the notice;

(5) A toll-free telephone number which the customer can use to contact the electric service provider to discuss the notice of termination or to file a complaint with the electric service provider, and the following statement: If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(6) A statement that informs the customer of his right to obtain services from another licensed electric service provider or a provider of last resort, and that information about other electric service providers or the provider of last resort (POLR) can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another electric service provider will have their electric service automatically transferred to the POLR and they may be required to pay a deposit, or prepay, to receive ongoing electric service. The electric service provider shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from the POLR.

(7) If a deposit is being held by the electric service provider on behalf of the customer, a statement that the deposit will be refunded to the customer or applied against the final bill of the customer, or both.

(8) Notification advising the customer that if the customer does not select another electric service provider by the next meter reading date, the customer will be automatically assigned to a provider of last resort for electric service.

(9) The availability of deferred payment or other billing arrangements, if any, from the electric service provider, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.

(10) A description of the activities that the electric service provider will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable arrangements with the electric service provider.

(d) Notification of the registration agent. After the expiration of the notice period in subsection (b) of this section, an electric service provider shall notify the registration agent of a "drop" request in a manner established by the registration agent so that the customer will receive service from the POLR if the customer does not select another electric service provider prior to the next meter reading and billing cycle.

(e) Termination due to abandonment by the service provider. An electric service provider shall not abandon a customer or a service area without written notice to its customers and approval from the commission.

(f) Extreme weather. An electric service provider shall comply with the restrictions on termination of service for residential customers during an extreme weather emergency and shall work with affected customers to establish deferred payment plans that comply with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).

(g) Customer's right to terminate a contract without penalty. A customer may terminate a contract without penalty in the event:

(1) The customer moves outside the electric service provider's service area or into an area where the electric service provider charges a different rate; or

(2) The contract allows the electric service provider such a right in response to changing market reasons.

§25.483. Disconnection of Service.

(a) Disconnection policy. Only the transmission and distribution utilities shall perform physical disconnections. Unless otherwise stated, it is the responsibility of an electric service provider to request such action from the appropriate transmission and distribution utility in compliance with the requirements of this section. If an electric service provider chooses to have a customer's electric service disconnected, it shall follow the procedures below, or modify them in ways that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection. Nothing in this section shall be interpreted to require an electric service provider to disconnect a customer.

(b) Disconnection with notice. A provider of last resort (POLR) may seek to have a customer's electric service disconnected after proper notice for any of these reasons:

(1) failure to pay a bill owed to the POLR or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice;

(2) failure to comply with the terms of a deferred payment agreement made with the POLR;

(3) violation of the POLR's terms and conditions on using service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the POLR has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(c) Disconnection without prior notice. An electric service provider, including a retail electric provider (REP) or affiliated REP, may seek to disconnect a customer's electric service without prior notice for any of the following reasons:

(1) where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the electric service provider shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service was reconnected without authority after disconnection for nonpayment; or

(4) where there has been tampering with the distribution utility's equipment or evidence of theft of service.

(d) Disconnection prohibited. A POLR shall not seek to disconnect a customer's electric service for any of the following reasons:

(1) delinquency in payment for electric service by a previous occupant of the premises;

(2) failure to pay for any charge that is not regulated by the commission, including competitive energy service, merchandise, or other services which are optional and not included in regulated POLR service;

(3) failure to pay for a different type or class of electric utility service unless charges for such service were included on that account's bill at the time service was initiated;

(4) failure to pay charges arising from an underbilling, except theft of service, more than six months prior to the current billing;

(5) failure to pay disputed charges, except for the required average billing payment, until a determination as to the accuracy of the charges has been made by the service provider or the commission and the customer has been notified of this determination;

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the provider is unable to read the meter due to circumstances beyond its control.

(e) Disconnection on holidays or weekends. Unless a dangerous condition exists or the customer requests disconnection, service shall not be disconnected on holidays or weekends, or the day immediately preceding a holiday or weekend, unless the provider's personnel are available on those days to take payments and reconnect service.

(f) Disconnection due to abandonment by the service provider. A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission.

(g) Disconnection of ill and disabled. A POLR shall not disconnect service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

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

(A) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health

official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the service provider by the stated date of disconnection;

(B) have the person's attending physician submit a written statement to the service provider; and

(C) enter into a deferred payment plan.

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

(h) Disconnection of energy assistance clients. A POLR shall not disconnect service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

(i) Disconnection during extreme weather. A POLR shall not disconnect a customer anywhere in its service territory during an extreme weather emergency and shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" shall mean a day when:

(1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or

(2) the NWS issues a heat advisory for any county in the provider's service territory, or when such advisory has been issued on any one of the preceding two calendar days.

(j) Disconnection of master-metered apartments. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The POLR shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the provider shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the provider shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(k) Disconnection notices. A disconnection notice issued by a POLR shall:

(1) not be issued before the first day after the bill is due, to enable the service provider to determine whether the payment was received by the due date. Payment of the delinquent bill at the provider's authorized payment agency is considered payment to the provider.

(2) be a separate mailing or hand delivered with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed.

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

(4) include a statement notifying the customer that if they need assistance paying their bill by the due date, or are ill and unable to pay their bill, they may be able to make some alternate payment arrangement, establish deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

§25.484. Do Not Call List.

(a) The commission or its designated agent will maintain or cause to be maintained a "Do Not Call" list of customers who do not want to receive telemarketing calls from electric service providers. The commission will provide customers with a variety of methods to be included on the list, including orally, in writing, and commercially acceptable electronic communication such as fax and e-mail. A customer will remain on the "Do Not Call" list for five years or until the customer affirmatively requests that she or he be removed from the list, whichever occurs sooner.

(b) Prohibition. A retail electric provider (REP) is prohibited from telemarketing to customers whose names are on the "Do Not Call" list. A REP shall be in compliance with this provision if the REP obtains the most recent version of the list on at least a quarterly basis and prevents telemarketing calls to customers identified on the list.

(c) Notice. A REP shall include notice of the existence of the "Do Not Call" list in the Your Rights as a Customer disclosure or terms of service document. The notice shall explain what the "Do Not Call" list is and how a customer can request that he or she be added to or removed from that list by contacting the commission or the commission's agent for the implementation of the list.

§25.485. Customer Access and Complaint Handling.

(a) Customer access.

(1) Each electric service provider or aggregator shall ensure reasonable access to its service representatives to make inquiries and complaints, discuss charges on customers bills, terminate competitive service, and transact any other pertinent business.

(2) Telephone access shall be toll-free and shall afford customers prompt answer times during normal business hours.

(3) Each electric service provider shall provide a 24-hour automated telephone message instructing caller to report any service interruptions or electrical emergencies.

(4) Each electric service provider and aggregator shall employ 24-hour capability for accepting customer contract cancellation by telephone.

(b) Complaint handling. No electric service provider or aggregator shall limit a residential or small commercial customer's right to make formal or informal complaints to the commission. An electric service provider or aggregator shall not require a residential or small commercial customer to make formal or informal complaints to the commission. An electric service provider or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution.

(c) Complaints to electric service providers or aggregators. A customer or applicant for service may submit a complaint in person, or by letter, fax, e-mail, or by telephone with the electric service provider. The electric service provider shall promptly investigate and advise the complainant of the results within 21 days. A customer or applicant who is dissatisfied with the electric service provider's review shall be informed of their right to file a complaint with the electric service

provider's supervisory review process, if available, and, if not available, the commission. Any supervisory review conducted by the electric service provider shall result in a decision communicated to the complainant within ten business days of the request. If the electric service provider does not respond to the customer's complaint in writing, the electric service provider shall orally inform the customer of the ability to obtain the electric service provider's response in writing upon request.

(d) Complaints to the commission.

(1) Informal complaints.

(A) If the complainant is dissatisfied with the results of the electric service provider's complaint investigation or supervisory review, the electric service provider shall advise the complainant of the commission's informal complaint resolution process and, upon request, the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936- 7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet website address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(B) Customers are encouraged to include the following in their complaint:

(i) The customer or applicant's name, address, and telephone number;

(ii) The name of the electric service provider;

(iii) The customer account number or electric service identifier (ESI) number;

(iv) An explanation of the facts relevant to the complaints; and

(v) Any other documentation that supports the complaint, including copies of bills or contract documents.

(C) The electric service provider shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the electric service provider.

(D) The commission shall review the complaint information and notify the complainant of the result of the investigation.

(E) While an informal complaint process is pending:

(i) The electric service provider shall not initiate collection activities, including termination or disconnection of service (as appropriate) or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill;

(ii) A customer is obligated to pay any undisputed portion of the bill and the electric service provider may pursue termination or disconnection of service (as appropriate) of the undisputed portion after appropriate notice;

(F) The electric service provider shall keep a record for two years after determination by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges or rates or charges which are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

§25.491. Record Retention and Reporting Requirements.

(a) Record retention.

(1) Each electric service provider shall establish and maintain records and data that are sufficient to:

(A) Verify its compliance with the requirements of any applicable commission rules; and

(B) Support any investigation of customer complaints.

(2) All records required by this chapter shall be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this chapter shall be provided to commission staff within five calendar days of its request.

(b) Annual reports. On June 1 of each year, an electric service provider shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

(1) The number of direct mail solicitations annually distributed to prospective customers by zip code plus four;

(2) The number of residential customers served by zip code plus four by month to the extent that such zip code information is available from the registration agent of the customer's transmission and distribution utility's service address;

(3) The number of written denial of service notices issued by the provider, by month, by customer class;

(4) The number and total aggregated dollar amount of deposits held by the electric service provider, by month, by customer class;

(5) The number of complaints resolved by the electric service provider from residential customers according to the following categories by month:

(A) Denial of service;

(B) Quality of service;

(C) Unauthorized billing (cramming), as required by §25.481 of this title (relating to Unauthorized Charges);

(D) Unauthorized change of a REP (slamming);

(E) Accuracy of billing services; and

(F) Collection and contract termination.

§25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.

(a) Noncompliance. An aggregator or electric service provider that fails to comply with Public Utility Regulatory Act (PURA) chapters 17 and 39, or commission order adopted pursuant to these chapters, may, after opportunity for hearing, be subject to any and all of the following available under the law, including, but not limited to:

(1) assessment of civil and administrative penalties under PURA §15.023;

(2) civil penalties under PURA §15.028;

(3) suspension or revocation of the applicable certification or denial of a request for renewal or change in the terms associated with a certification; and

(4) such other relief directed to affected customers as allowed by law.

(b) Commission investigation. The commission may initiate a compliance or other enforcement proceeding upon its own initiative, after an incident has occurred, or a complaint has been filed, or a staff notice of probable noncompliance has been served. The commission may coordinate this investigation with an investigation undertaken by the office of the attorney general.

(c) Suspension and revocation of certification. The commission may initiate a proceeding to seek either suspension or revocation of an aggregator's or electric service providers certification.

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 16, 2000.

TRD-200005788
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7308

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.274

The Public Utility Commission of Texas (commission) proposes an amendment to §26.274 relating to Imputation. The proposed amendment will incorporate changes to provide consistency with the required provisions contained in Senate Bill 560, 76th Legislative Session, which revised the Public Utility Regulatory Act (PURA). The proposed amendment to §26.274 reflects the modification of PURA §58.054 and §59.021(c), as well as the legislative repeal of PURA §§58.101 - 58.104 and the revision of PURA Chapter 59, Subchapter E. Project Number 21169 has been assigned to this proceeding.

Rick Akin, Chief Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed 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. Akin has 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 to bring §26.274 in compliance with the guidelines of the 76th Legislature in its implementation of Senate Bill 560 and PURA. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Akin has 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.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 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 section. All comments should refer to Project Number 21169.

This new amendment 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.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §59.021.

§26.274. Imputation.

(a)-(d) (No change.)

(e) Rates to which imputation is not required. The price of a retail local exchange telephone service that is a basic network service or a retail local exchange telephone service whose rate is capped pursuant to PURA Chapter 59 shall not be subject to the requirements of this section unless:

(1) the [~~four year~~]price cap under PURA Chapter 58 or the election period [~~six-year price cap~~]under PURA Chapter 59 has expired;

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

(4) the service is reclassified from a basic network service to a non-basic [~~discretionary or competitive~~]service.

(f)-(k) (No change.)

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

Filed with the Office of the Secretary of State, on August 15, 2000.

TRD-200005724
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7308

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.412

The Public Utility Commission of Texas (commission) proposes an amendment to §26.412, relating to Lifeline Service and Link Up Service Programs. The proposed amendment will facilitate automatic enrollment of individuals qualifying for Lifeline Service and Link Up Service pursuant to Public Utility Regulatory Act §55.012 and §55.015 requirements. Project Number 21329 has been assigned to this proceeding.

Ms. Janis Ervin, Senior Utilities Analyst, Telecommunications Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for the commission as a result of enforcing or administering this section. However, the Texas Department of Human Services (TDHS) has estimated that it will incur automation- related implementation costs of $212,585 in state funds. This estimate is based on the additional systems programming hours needed to produce an initial electronic file of eligible consumers for distribution to the eligible telecommunications carriers, as well as for periodic updates. There will be no other fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Janis Ervin has 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 an expansion of current Lifeline Service and Link Up Service subscribership. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Janis Ervin has 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.

The commission staff will conduct a public hearing on this rulemaking if properly requested under Government Code §2001.029(b).

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 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 section. All comments should refer to Project Number 21329.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §55.012 and §55.015 which require the commission to adopt rules providing for automatic enrollment of eligible consumers to receive Lifeline Service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 55.012 and 55.015.

§26.412. Lifeline Service and Link Up Service Programs.

(a) Scope and Purpose. Through this rule the commission seeks to extend Lifeline Service and Link Up Service to all qualifying end users by establishing a procedure for automatic enrollment[~~Application~~]. This section applies to eligible telecommunications carriers as defined by §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds[~~(FUSF)~~]) and §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(b) Lifeline Service and Link Up Service. Each eligible telecommunications carrier shall provide Lifeline Service and Link Up Service as provided by this section. A consumer with an income at or below 125% of the federal poverty guidelines, or receiving benefits from any of the following programs qualifies for Lifeline and Link Up Services: Medicaid, food stamps, Supplemental Security Income (SSI), federal public housing assistance, or Low Income Energy Assistance Program (LIHEAP). A consumer eligible for Lifeline Service is automatically eligible for Link Up Service. However, a consumer may qualify for and receive Link Up Service independently of Lifeline Service. Nothing in this section shall prohibit a consumer otherwise eligible to receive Lifeline Service and/or Link Up Service from obtaining and using telecommunications equipment or services designed to aid such consumer in utilizing qualifying telecommunications services.

(c) Lifeline Service Program. Lifeline Service is a retail local service offering available to qualifying low-income consumers. Eligible telecommunications carriers provide qualifying end users with a waiver of the federal subscriber line charge (SLC) and discounts totaling $10.50 per monthly bill and are reimbursed from federal and state universal service funds.

(1) Provision of Lifeline Service. Lifeline Service shall be provided according to the following requirements.

(A) (No change.)

(B) Toll blocking[~~limitation~~].

(i) Toll blocking[~~limitation~~] requirements. The eligible telecommunications carrier shall offer toll blocking[~~limitation~~] to all qualifying low-income consumers at the time such consumers subscribe to Lifeline Service. If the consumer elects to receive toll blocking,[~~limitation,~~] that service shall become part of the consumer's Lifeline Service and the consumer's monthly bill will not be increased by the toll blocking charge.

(ii) Waiver. The commission may grant a waiver of the requirement of clause (i) of this subparagraph upon a finding that exceptional circumstances prevent an eligible telecommunications carrier from providing toll blocking.[~~limitation.~~] The period for the waiver shall not extend beyond the time that the commission deems necessary for that eligible telecommunications carrier to complete network upgrades to provide toll blocking[~~limitation~~] services.

(C) Disconnection of service.

(i) (No change.)

(ii) Disconnection when qualification has ended. Upon notice by the Texas Department of Human Services (TDHS) that an end user no longer qualifies for Lifeline Service, the eligible telecommunications carrier shall provide a direct mail notice to the end user advising that the Lifeline Service discount will be discontinued 30 days from the date of the notice unless the end user notifies the eligible carrier that an error has been made. If the end user notifies the carrier of an error, the Lifeline Service discount will be continued for an additional 30 days to allow the end user adequate time to correct records and obtain an affirmation of eligibility from TDHS. If the end user has not obtained an affirmation of eligibility from TDHS by the end of the 60-day period, Lifeline Service may be discontinued and

the end user's service and billing will continue at applicable tariffed rates. [Waiver. The commission may grant a waiver of clause (i) of this subparagraph if the eligible telecommunications carrier can demonstrate that:]

[(I) it would incur substantial costs in complying with this requirement;]

[(II) it offers toll limitation to its qualifying low-income consumers without charge; and]

[(III) telephone subscribership among low-income consumers in the eligible telecommunications carrier's service area is greater than or equal to the national subscribership rate for low-income consumers with an income below the poverty level for a family of four residing in the state.]

(iii) Disconnection of customers who have self-certified. Individuals not receiving benefits through TDHS programs, but who have met Lifeline and Link Up income qualifications in subsection (b) of this section, may be required to verify their status with an affidavit. Eligible telecommunications carriers may require such verification annually and notify customers receiving Lifeline Service by direct mail that the accompanying affidavit must be submitted within 60 days to continue the Lifeline Service. If the customer does not respond within 60 days, the eligible telecommunications carrier must provide the affidavit by direct mail with a notice advising that if it is not returned within 30 days the Lifeline Service will cease and service will continue at applicable tariffed rates. [Review by Federal Communications Commission (FCC).]

[(I) An eligible telecommunications carrier may file a petition for review of the commission decision pursuant to clause (ii) of this subparagraph with the FCC within 30 days of that decision.]

[(II) If the commission has not acted on a petition to waive the requirement of clause (i) of this subparagraph within 30 days of the date of the filing of the waiver petition, the eligible telecommunications carrier may file the petition with the FCC on the 31st day after the initial filing date.]

[(iv) Subsequent waiver requests. An eligible telecommunications carrier may reapply for the waiver set forth in clause (ii) of this subparagraph.]

(D) Service deposit prohibition.

[(i) Service deposit requirements.]If the qualifying low-income consumer voluntarily elects toll blocking from the eligible telecommunications carrier, the [An eligible telecommunications]carrier may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits), in order to initiate Lifeline Service[, if the qualifying low-income consumer voluntarily elects toll blocking from the eligible telecommunications carrier].

[(ii) Waiver. If a waiver for providing toll blocking has been granted pursuant to subparagraph (B)(ii) of this paragraph, an eligible telecommunications carrier may charge a service deposit.]

(2) Lifeline support.

(A) (No change.)

(B) Recovery of support amounts.

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

(iii) Additional state reduction with federal matching.

(I) An eligible telecommunications carrier shall be entitled to recover support from the Texas Universal Service Fund to recover the reduction amount required by subparagraph (A)(iii)(I) of this paragraph. [An eligible telecommunications carrier that is also an incumbent local exchange company (ILEC) as defined by §26.5 of this title (relating to Definitions) that offered, as of June 1, 1997, a tariffed $3.50 Lifeline Service rate discount in addition to the $3.50 waiver of the federal SLC, must reduce rates for services determined appropriate by the commission by an amount equivalent to the amount of support it is eligible to receive under this subclause. If such ILEC does not reduce its toll and access rates pursuant to this subclause, it shall not be eligible to receive support under this subclause.]

(II) (No change.)

(C) Application of support amounts.

(i) An eligible telecommunications carrier that is also an incumbent local exchange company (ILEC) as defined by §26.5 of this title (relating to Definitions) that offered, as of June 1, 1997, a tariffed $3.50 Lifeline Service rate discount in addition to the $3.50 waiver of the federal SLC, must reduce rates for services determined appropriate by the commission by an amount equivalent to the amount of support it is eligible to receive under this subclause. If such ILEC does not reduce its toll and access rates pursuant to this subclause, it shall not be eligible to receive support under this subclause.

(ii) [(i)] Eligible telecommunications carriers that charge the federal SLC or equivalent federal charges shall apply the $3.50 federal baseline Lifeline support to waive a qualified low-income consumer's federal SLC. The state-approved reductions of $1.75 and $3.50 and the additional federally approved reduction of $1.75 shall be applied to reduce the monthly intrastate end user charges paid by the qualifying low-income consumers.

(iii) [(ii)] Eligible telecommunications carriers that do not charge the federal SLC or equivalent federal charges shall apply the $3.50 federal baseline Lifeline support amount, plus the state-approved reductions of $1.75 and $3.50 and the additional federally approved reduction of $1.75 to reduce their lowest tariffed residential rate for the supported services and charge qualified low-income consumers the resulting amount.

(iv) [(iii)] The monthly discounted residential rate for qualified low-income consumers may not be reduced below $2.50.

(d) Link Up Service Program. This is a program certified by the FCC that provides a qualifying low-income consumer with the following assistance:

(1) Services.

(A) (No change.)

(B) A qualifying low-income consumer may receive a deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed the consumer shall be for connection charges of up to $200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements. Deferred payment of these charges will not be subject to late fees or additional service fees.

(2) Qualifying low-income consumer choice. A qualifying low-income consumer is eligible for[may choose one or] both of the services[programs] set forth in paragraphs (1)(A) and (B) of this subsection.

(3) Limitation on receipt. An eligible telecommunications carrier's Link Up Service[~~program~~] shall allow a qualifying low-income consumer to receive the benefit of Link Up Service on subsequent occasions[~~the Link Up program for a second or subsequent time~~] only for a principal place of residence with an address different from the residence address at which the Link Up Service[~~assistance~~] was provided previously.

(e) Obligations of the consumer[~~,Texas Department of Human Services (TDHS),~~] and the eligible telecommunications carrier.

(1) Obligations of the consumer. Consumers who meet the low income requirement for qualification but do not receive benefits under the programs listed in subsection (b) of this section may provide their local eligible telecommunications carrier with an affidavit of self-certification for Lifeline and/or Link Up Service benefits. Consumers receiving benefits under the programs listed in subsection (b) of this section and who have telephone service will be subject to the automatic enrollment procedures of TDHS unless they provide their local carrier with a request to be excluded from Lifeline and/or Link Up Service. Consumers receiving benefits under the programs listed in subsection (b) of this section[~~Consumers may apply for Lifeline Service and Link Up Service by completing and filing an application with TDHS. Consumers who are eligible for Lifeline Service and Link Up Service~~] and who do not have telephone service must[~~additionally~~] initiate a request for service from an[~~their serving~~] eligible telecommunications carrier providing local service in their area.

[~~(2) Obligations of TDHS. TDHS shall review the consumer's application form and shall determine if the consumer meets the eligibility criteria. TDHS shall provide each eligible telecommunications carrier with an initial list of consumers eligible for Lifeline Service and Link Up Service and shall provide an updated list to each eligible telecommunications carrier on a semi-annual basis.~~]

(2) [~~(3)~~] Obligations of eligible telecommunications carriers.

(A) Lifeline Service.

(i) The eligible telecommunications carrier shall provide Lifeline Service to all eligible consumers identified by TDHS within its service area in accordance with [~~if the existing service of those consumers meets the qualifications set forth in subsection (d)(1) of~~] this section.

(I) The eligible telecommunications carrier shall identify those consumers on the initial list(s) provided by TDHS [~~list~~]to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income consumers in accordance with the timeline filed with the commission pursuant to subsection (i) of this section[~~determine if the existing telephone service qualifies. Within 60 days after receipt of the list, the eligible telecommunications carrier shall begin reduced billing for those qualifying low-income consumers subscribing to qualifying services~~].

(II) If the eligible telecommunications carrier is not providing telephone service to the eligible consumer, the eligible telecommunications carrier shall advise the consumer by direct mail, in accordance with the timeline filed with the commission pursuant to subsection (i) of this section, of their eligibility and of the steps necessary for the consumer to enroll in Lifeline Service. The eligible telecommunications carrier shall advise the eligible consumer by direct mail that persons choosing not to take the necessary steps to enroll will not receive Lifeline Service.

(III) The eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible consumer changes the telephone service or initiates new service, the eligible telecommunications carrier shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.

[(ii) ~~If the existing telephone service does not qualify, the eligible telecommunications carrier shall advise the eligible consumer by direct mail of changes necessary to satisfy Lifeline criteria. The eligible telecommunications carrier shall advise the eligible consumer by direct mail that persons choosing not to make necessary changes to their telephone service arrangements will not receive Lifeline Service and that the eligible consumer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible consumer changes the telephone service to qualifying services or initiates new qualifying service, the eligible telecommunications carrier shall begin reduced billing at the time the change of service becomes effective or at the time new service is established.~~]

(ii) [~~(iii)~~] Upon receipt of the monthly update provided by TDHS under subsection (e)(2) of this section, the eligible telecommunications carrier shall begin reduced billing for those qualifying low-income consumers subscribing to services within 30 days of receipt of the monthly update.[~~The eligible telecommunications carrier shall notify TDHS on a semi-annual basis of changes in the status of its Lifeline Service consumers.~~]

(iii) The eligible telecommunications carrier shall provide an affidavit of self-certification to all customers who may meet the low income criteria of subsection (b) of this section but do not receive benefits from TDHS and shall provide such affidavit by direct mail at the customer's request. Upon receipt of the customer's signed affidavit the eligible telecommunications carrier shall initiate Lifeline and/or Link Up Service within 30 days. The eligible telecommunications carrier may require annual verification pursuant to the procedure in subsection (c)(1)(C)(iii) of this section.

(B) Link Up Service. The eligible telecommunications carrier shall provide Link Up Service to all qualifying low-income consumers as described in this section[~~identified by TDHS within its service area, who have initiated a request for service pursuant to subsection (e)(1) of this section~~]. Upon receipt of the self-certification affidavit, or the TDHS initial automatic enrollment list, the eligible telecommunications carrier will initiate contact, by direct mail or telephone, with the qualifying consumer to determine any necessary information required to accomplish a request for new service. If the consumer does not respond to the eligible telecommunications carrier's initial contact within 30 days the eligible telecommunications carrier shall send a direct mail notice to the consumer advising that the opportunity for Link Up Service shall continue but the consumer will be required to contact the eligible telecommunications provider to initiate an order for new service.

[~~(C) Qualifying low-income consumer certification. An eligible telecommunications carrier shall obtain from the qualifying low-income consumer that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the following: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Energy Assistance Program, and shall identify the program(s) from which that consumer receives benefits. On the same document, a qualifying low-income consumer must also agree to notify the eligible telecommunications carrier if that consumer ceases to participate in the program(s) identified.~~]

(f) Memorandum of Understanding. Pursuant to a Memorandum of Understanding (MOU) between the commission and TDHS to facilitate automatic enrollment of eligible consumers in Lifeline and/or Link Up Services, the commission and TDHS will undertake the following obligations.

(1) Commitments of the commission.

(A) The commission will provide TDHS with a listing of eligible telecommunications carriers in the state. The listing will include the carriers' mailing addresses, a list of the counties served by each carrier, and a carrier contact for Lifeline and Link Up Services.

(B) On a monthly basis, the commission will provide electronic updates to the listing set out in subparagraph (A) of this paragraph, including changes, additions or deletions to the listing.

(C) The commission will work with TDHS to develop informational material on Lifeline and Link Up Services for distribution to eligible consumers through TDHS' field offices.

(D) The commission will provide TDHS with other information available to the commission that will assist TDHS in implementing an automatic enrollment system for eligible consumers.

(2) Commitments of TDHS.

(A) TDHS will identify all active recipients of the benefits in subsection (b) of this section who are therefore eligible for Lifeline and Link Up Service.

(B) By January 2, 2000, provided that TDHS has received a signed confidentiality agreement pursuant to subsection (l) of this section, TDHS will provide each eligible telecommunications carrier with an initial list of eligible consumers for automatic enrollment in Lifeline Service and Link Up Service in an electronic format.

(C) The initial list set out in subparagraph (B) of this paragraph will list those eligible consumers with telephone numbers first, followed by all other eligible consumers sorted by zip code. For each eligible consumer, the list shall include the name, address, county and telephone number, if available. TDHS and an eligible telecommunications carrier may agree on another format to the initial list.

(D) TDHS will provide electronic updates to the initial list, in the same format, to each eligible telecommunications carrier on a monthly basis. The monthly updates will include new eligible consumers and consumers who are no longer eligible.

(E) TDHS will work with the commission to develop informational material on Lifeline and Link Up Services for distribution to eligible consumers through TDHS' field offices.

(g) [~~(f)~~] Tariff requirement. Each carrier seeking designation as an eligible telecommunications carrier shall file a tariff to implement Lifeline Service and Link Up Service, or revise its existing tariff for compliance with this section and with applicable law, prior to filing its application for designation as an eligible telecommunications carrier. Within 60 days of the effective date of this section all carriers currently offering Lifeline and Link Up Service shall file a revised tariff in compliance with this section. No other revision, addition, or deletion unrelated to Lifeline Service and Link Up Service shall be contained in the tariff application.

(h) Review of affidavits of self-certification, letters and notices provided by eligible telecommunications carriers. Within 30 days of the effective date of this section, eligible telecommunications carriers must provide drafts of the standard affidavit of self- certification for low income consumers and any proposed letters, notices or informational material, including text of its directory notice, to be used pursuant to this section for commission review and approval prior to use.

(i) Implementation timeline. Within 30 days of the effective date of this section, all eligible telecommunications carriers must file with the commission, a proposed timeline for the implementation of subsection (e)(2)(A) of this section. The proposed timeline shall not extend beyond 180 days after the effective date of this section.

(j) [~~(g)~~] Reporting requirements.

(1) Within 180 days after the effective date of this section, all eligible telecommunications carriers must file with the commission a report detailing all of their efforts to contact eligible consumers, including, but not limited to, the number of direct mail pieces sent pursuant to subsection (e)(2)(A)(i)(II) of this section and the number of corresponding responses.

(2) [~~(1)~~] Texas Universal Service Fund (TUSF). An eligible telecommunications carrier providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information.

(A) Initial reporting requirements. An eligible telecommunications carrier shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline plan meets the requirements of this section.

(B) Monthly reporting requirements. An eligible telecommunications carrier shall report monthly to the TUSF administrator the total number of qualified low-income consumers to whom Lifeline Service was provided for the month by the eligible telecommunications carrier.

(C) Other reporting requirements. An eligible telecommunications carrier shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(3) [~~(2)~~] Federal Lifeline Service Program. An eligible telecommunications carrier shall file the following information with the administrator of the Federal Lifeline Program:

(A) information demonstrating that the eligible telecommunications carrier's Lifeline plan meets the criteria set forth in 47 Code of Federal Regulations Subpart E (relating to Universal Service Support for Low-Income Consumers);

(B) the number of qualifying low-income consumers served by the eligible telecommunications carrier;

(C) the amount of state assistance; and

(D) other information required by the administrator of the Federal Lifeline Program.

(k) Notice of Lifeline and Link Up Services. An eligible telecommunications provider shall provide notice of Lifeline and Link Up Services in any directory it distributes to its customers and shall provide an annual bill message advising customers of the availability of Lifeline and Link Up Services.

(l) Confidentiality agreements. Eligible telecommunications carriers must execute a confidentiality agreement with TDHS prior to receiving the eligible consumer list pursuant to subsection (f)(2)(B) of this section. The agreement will specify that client information is released by TDHS to the carrier for the sole purpose of providing Lifeline and/or Link Up Service to eligible consumers and that the information cannot be released by the carrier or used by the carrier for any other purpose.

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 16, 2000.

TRD-200005770
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 936-7308

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PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.8

The Texas Motor Vehicle Board proposes to amend §111.8 by adding advisory language to Appendices A-2 and D-2 that will make it clear to printers of license tags that they must enter into a licensing agreement with Texas Department of Transportation (TxDOT) to print temporary tags for dealers and converters. This language is already on the instructions for buyer's tags and these amendments will make the instructions uniform for all tags authorized by this subsection. In addition, language notifying printers of the requirement for using copyrighted TxDOT logos is proposed to be added to Appendices A-2, B-2, B-4, C-2, and D-2.

Brett Bray, Director, Motor Vehicle Division, 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 enforcing or administering the sections.

Mr. Bray has also determined that for each of the first five years the amendments are in effect, the anticipated public benefit will be a clearer understanding of the requirements for a printer wishing to print temporary tags. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. Please submit fifteen copies. The Texas Motor Vehicle Board will consider the adoption of the proposed amendments at its meeting on November 16, 2000. The deadline for comments is October 26, 2000.

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to amend rules as necessary and convenient to effectuate the provisions of this act.

Texas Motor Vehicle Commission Code Section 4.01 and Transportation Code Sections 503.062, 503.0625, 503.063, and 503.067 - 503.069 are affected by the proposed amendments.

§111.8. Temporary Cardboard Tags.

(a) Motor vehicle, travel trailer, trailer/semitrailer, and converter tags shall be printed on not less than six-ply cardboard with bolt holes to be horizontally punched on 7-inch centers and vertically punched on 4 1/2-inch centers and the numerals in the expiration date shall not be less than two inches high. Motorcycle tags shall be printed on not less than six-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the numerals in the expiration date shall not be less than one inch high. Homemade cardboard tags or cardboard tags which have buyer's tag information printed on one side and dealer's tag information printed on the other side are not acceptable.

(b) The following appendices indicate the design and the instructions for printing and use of each of the respective temporary tags:

(1) Appendix A-1 - Dealer (design); Appendix A-2 - Dealer (instructions);
Figure 1: 16 TAC §111.8(b)(1) (No Change)
Figure 2: 16 TAC §111.8(b)(1)

(2) Appendix B-1 - Buyer - Initial (design); Appendix B-2 - Buyer - Initial (instructions);
Figure 1: 16 TAC §111.8(b)(2) (No Change)
Figure 2: 16 TAC §111.8(b)(2)

(3) Appendix B-3 - Buyer - Supplemental (design); Appendix B-4 - Buyer -Supplemental (instructions);
Figure 1: 16 TAC §111.8(b)(3) (No Change)
Figure 2: 16 TAC §111.8(b)(3)

(4) Appendix C-1 - Charitable (design); Appendix C-2 - Charitable (instructions);
Figure 1: 16 TAC §111.8(b)(4) (No Change)
Figure 2: 16 TAC §111.8(b)(4)

(5) Appendix D-1 - Converter (design); Appendix D-2 - Converter (instructions).
Figure 1: 16 TAC §111.8(b)(5) (No Change)
Figure 2: 16 TAC §111.8(b)(5).

(c) The director may designate the number, size, color, and placement of logos to be printed on temporary plates and may enter into licensing agreements with printers for their use.

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 17, 2000.

TRD-200005836
Brett Bray
Director, Motor Vehicle Board
Texas Motor Vehicle Board
Proposed date of adoption: November 16, 2000
For further information, please call: (512) 416-4899

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PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER A. OFFICIALS

DIVISION 1. GENERAL PROVISIONS

16 TAC §§313.1, 313.2, 313.4, 313.5

The Texas Racing Commission proposes amendments to §§313.1, 313.2, 313.4 and 313.5. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments conform the number and types of horse racing officials to current industry practice. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there are no fiscal implications for state or local government as a result of enforcing the proposals.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice and will be internally consistent. There will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.1 Racetrack Officials.

(a) Except as otherwise provided by this section, the following officials must be present at each horse race conducted in this state:

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

[~~(5) at least one patrol judge;~~]

(5) [~~(6)~~] a paddock judge;

(6) [~~(7)~~] a clerk of scales;

(7) [~~(8)~~] an official timer;

(8) [~~(9)~~] a horseshoe inspector;

(9) [~~(10)~~] a director of racing;

(10) [~~(11)~~] a racing secretary and handicapper;

(11) [~~(12)~~] an assistant racing secretary;

(12) a stakes coordinator;

(13)-(17) (No change.)

(18) at least one morning clocker; [~~and~~]

(19) a horsemen's bookkeeper; and

(20) two outriders.

(b) An association may also appoint one or more patrol judges as officials. [~~A patrol judge is not required for a race meeting at a Class 2 or Class 3 racetrack.~~]

§313.2. Duties.

(a) An official shall diligently perform all duties prescribed by the Commission [~~commission~~] for the official.

(b) An official shall promptly report to the stewards or the executive secretary [~~commission~~] any observed violation of the Act or the Rules [~~a rule of the commission~~].

§313.4. Approval of Officials.

(a) (No change.)

(b) Not later than the 30th day before the first day of a race meeting, an association shall submit to the executive secretary [~~a document containing~~] the name of each individual appointed to serve as an official at the race meeting. The executive secretary may require the association to submit a brief job description for each of the officials [~~for approval by the commission~~].

(c) The executive secretary may rescind the approval of an official if the executive secretary determines that:

(1) the official has violated the Act or the Rules [~~a rule of the commission~~];

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

§313.5. Complaints against Officials.

(a) A complaint against an official other than a steward must be made in writing to the stewards or to the executive secretary. The stewards shall file a written report with the executive secretary [~~commission~~] regarding each complaint received under this subsection, the stewards' action on the complaint, and any recommendation for Commission [~~commission~~] action on the complaint.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on August 16, 2000.

TRD-200005808
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 2. DUTIES OF STEWARDS

16 TAC §§313.21 - 313.25

The Texas Racing Commission proposes amendments to §§313.21, 313.22, 313.23, 313.24, and 313.25. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th

Legislature, 1999, §9-10.13. The amendments clarify the responsibilities of the stewards to conform to current industry practice. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice and will be internally consistent. There will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.21. Eligibility for Appointment.

(a) Except as otherwise provided by this section, to be appointed to serve as a steward, an individual must:

(1) (No change.)

(2) satisfactorily pass an optical examination conducted annually [~~not more than 90 days before the appointment~~], indicating at least 20/20 vision, corrected, and the ability to distinguish colors;

(3) (No change.)

(4) satisfactorily pass a written examination prescribed by the executive secretary [~~commission~~]; and

[~~(5) participate in an oral interview conducted by the executive secretary or a designee of the executive secretary; and~~]

(5) [~~(6)~~] demonstrate to the executive secretary's [~~commission's~~] satisfaction that the individual's income from sources other than as a steward is unrelated to patronage of or employment by a licensee of the Commission [~~commission~~].

(b) To be appointed to serve as a steward, an individual must:

(1) have served as an official at a race meeting recognized by the Commission [~~commission~~] or another racing jurisdiction; or

(2) (No change.)

(c) The executive secretary [~~or a designee of the executive secretary~~] shall administer the written examination for stewards. A passing grade for the written examination is 85%.

§313.22. General Duties.

(a) In addition to the duties described in Chapter 307 of this title (relating to Practice and Procedure), the stewards have the general authority and supervision over the conduct of each [~~licensed~~] race [~~meeting~~] and [~~over~~] all licensees at a racetrack during a race meeting. If [~~In the event~~] a question arises during a race meeting regarding the operations of a racetrack or the conduct of racing that is not covered by the Act or the Rules [~~a rule of the commission~~], the stewards shall resolve the question [~~questions~~] in conformity with justice and the best interest of racing.

(b) The stewards are authorized [~~have the power~~] to:

(1) interpret and enforce the Act and the Rules [~~rules of the commission~~] and to determine all questions, disputes, complaints, or objections relating to racing matters in accordance with the applicable laws;

(2) (No change.)

(3) review applications for individual licenses submitted at the racetrack, hold hearings on applications for individual licenses, and deny temporary or permanent licenses for grounds authorized by the Act or the Rules [~~commission rule~~];

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

(6) require a jockey, trainer, or other licensee to review a video replay [~~view a film~~] of a race in which the person participated;

(7) examine or order the examination of a horse or the ownership papers, certificates, or other documents pertaining to a horse's identification;

(8) determine whether a disqualification is warranted if [~~in the event of~~] a foul or a riding infraction occurs; and

(9) perform any other duty necessary on behalf of the Commission [~~commission~~] to ensure a race meeting is conducted in accordance with the Act and the Rules [~~rules of the commission~~].

(c) The stewards may, at any time, order an endoscopic examination of a horse to determine the presence of foreign material in the nasal passages that obstructs or could obstruct the flow of air into the horse's lungs. An examination ordered under this subsection must be:

(1) performed by a veterinarian licensed by the Commission [~~commission~~] at the horse owner's expense; and

(2) (No change.)

§313.23. Supervision of Entries.

At least one steward shall be present on association grounds during the taking of entries until the overnight is completed. The stewards shall oversee the taking of entries and supervise all scratches and declarations. To ensure the integrity of a race and the participants in a race, the [~~The~~] stewards may:

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

(3) refuse to permit a scratch [~~or a declaration~~]; or

(4) (No change.)

§313.24. Records and Reports.

(a) The stewards shall prepare a report of all actions taken and observations made during each day's race program. The report must contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections, and any unusual circumstances

or conditions. The report must be signed by each steward and be filed with the executive secretary at the end of each race week [~~commission not later than 72 hours after the end of the race day~~].

(b) The stewards shall maintain a detailed log of the stewards' official activities. The log must describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations, and rulings made by the stewards. The log must be available at all times for inspection by the executive secretary [~~commission or a representative of the commission~~].

(c) Not later than seven days after the last day of a race meeting, the stewards shall submit to the executive secretary [~~commission~~] a written report regarding the race meeting. The report must contain:

(1) (No change.)

(2) any recommendations for improvement by the association or action by the Commission [~~commission~~] and any recommendations for changes to the Rules [~~rules of racing~~].

§313.25. Steward's List.

(a) The stewards shall maintain a steward's list of the horses that are ineligible to start in a race because of:

(1) poor or inconsistent performance; or

(2) behavior on the racetrack that endangers the health or safety of other participants in racing.

(b) To be removed from the steward's list a horse must, during a workout or schooling race, perform in a manner satisfactory to show the stewards that the horse:

(1) [~~it~~] will no longer pose a threat to other participants; and

(2) [~~it~~] will be competitive in a race in which it participates.

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 16, 2000.

TRD-200005807
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 3. DUTIES OF OTHER OFFICIALS

16 TAC §§313.41 - 313.52, 313.57, 313.60, 313.61

The Texas Racing Commission proposes amendments to §§313.41-313.52, 313.57, 313.60, and 313.61. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the responsibilities of racing officials to conform to current industry practice. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.41. Racing Secretary.

(a) The racing secretary shall supervise the operations of the racing office and its employees. The racing secretary shall:

(1)-(7) (No change.)

(8) allocate stalls in accordance with the Act and the Rules [~~rules of the commission~~]; and

(9) perform all other duties imposed on the racing secretary by the Rules [~~these rules~~] or the association.

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

§313.42. [~~Duties of~~] Morning Clocker.

(a) The morning clocker shall identify each horse that comes on the racetrack to work and shall record the accurate time of the horse's work. Each day, the morning clocker shall prepare a list of works that describes, for that morning's works, the name of the horse, the distance of the work, and the time of the work. The morning clocker shall ensure the accuracy of the list of works and any other documentation regarding a work performed at that track.

(b) (No change.)

§313.43. [~~Duties of~~] Official Timer.

(a) At the end of a race, the official timer shall post the official time on the tote [~~infield totalisator~~] board on instruction by the stewards.

(b) The [~~At a racetrack equipped with an appropriate infield totalisator board, the~~] official timer shall post the quarter times (splits) for thoroughbred races in fractions on the tote [~~infield totalisator~~] board as the race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(c) (No change.)

§313.44. [~~Duties of the~~] Paddock Judge.

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

§313.45. [~~Duties of the~~] Clerk of Scales.

(a) The clerk of scales shall report to the stewards any jockeys who are late to weigh for the day's races and any jockeys who are having difficulty [~~severe problems~~] maintaining their riding weight.

(b)-(f) (No change.)

§313.46. [~~Duties of~~] Placing Judges.

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

§313.47. [~~Duties of the~~] Patrol Judges.

The patrol judges, if used, shall view the running of each race from the appropriate patrol tower and report to the stewards each incident occurring during the race.

§313.48. [~~Duties of~~] Commission Veterinarians.

The commission veterinarians shall supervise all veterinary practices on association grounds, advise the executive secretary [~~commission~~] and the stewards on all veterinary matters, and perform all other duties required by the executive secretary or the Rules [~~commission or these rules~~]. [~~When appointing the commission veterinarians for a race meeting, the commission shall designate one of the veterinarians to be ultimately responsible for the proper performance of the duties of the commission veterinarians.~~]

§313.49. Starter.

(a) The starter shall issue orders and take measures necessary to ensure [~~insure~~] a fair start.

(b)-(e) (No change.)

§313.50. [~~Duties of the~~] Horse Identifier.

(a) The horse identifier shall identify each horse while it is in the pre-race holding area or paddock. The horse identifier shall immediately report to the stewards and paddock judge a horse that is not properly identified or that has any irregularities from the official identification record [~~of the commission~~].

(b) The horse identifier shall inspect, identify, and prepare identification records on all horses that race at a race meeting [~~and have not been previously identified in Texas~~].

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

§313.51. [~~Duties of the~~] Horseshoe Inspector.

(a) The horseshoe inspector shall inspect the horseshoes of each horse in [~~before it departs for~~] the paddock. The inspector shall immediately report to the stewards and paddock judge a horse that is improperly shod.

(b) The horseshoe inspector shall maintain a record of unusual types of racing plates worn by each horse scheduled to race. [~~At the end of each race day, the horseshoe inspector shall deliver a copy of the record to the stewards.~~] With the approval of the stewards, the horseshoe inspector may order adjustments or corrections to the racing plates of a horse.

§313.52. [~~Duties of~~] Jockey Room Custodian.

(a) In the absence of the clerk of scales, the [~~The~~] jockey room custodian shall supervise the conduct of the jockeys and their attendants while they are in the jockey room.

(b) The jockey room custodian shall:

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

(3) keep a daily video review [~~film~~] list as dictated by the stewards and have it displayed in plain view for all jockeys;

(4)-(6) (No change.)

§313.57. Announcer.

The announcer shall promptly make all announcements to the patrons that are required by the Rules [~~rules of the commission~~], including announcements regarding scratches, jockey changes, jockey overweights [~~overweight~~], and other information pertinent to the running of the race. The announcer shall make all announcements from the stewards regarding objections and inquiries concerning [~~regarding~~] a race.

§313.60. Test Barn Technicians.

The test barn technicians shall perform any duty required by the test barn supervisor [~~commission veterinarian~~] and shall assist in the collection of urine specimens for testing and in the maintenance of the test barn facilities.

§313.61. Horsemen's Bookkeeper.

(a) Designation of horsemen's bookkeeper.

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

(3) A designation as horsemen's bookkeeper does not constitute a license, but the executive secretary [~~commission~~] may require any individual involved with a designated entity to receive a license.

(4) (No change.)

(b) Revocation of designation.

(1) (No change.)

(2) The executive secretary may revoke a designation as the horsemen's bookkeeper if the executive secretary determines the designated entity has:

(A) failed to comply with the Act, [~~commission rules~~], or the plan of operation, in a manner that indicates malfeasance as opposed to mere mistake;

(B) (No change.)

(C) misappropriated or mishandled funds in its possession or control; [~~or~~]

(D) failed to correct within a reasonable time any deficiency in operations identified by the executive secretary in writing; or

(E) had its authority to act as a horsemen's bookkeeper revoked in another jurisdiction.

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

(c) Operations of horsemen's bookkeeper.

(1) Each owner engaged in racing must open and maintain an account with the horsemen's bookkeeper. The horsemen's bookkeeper may permit other individuals to open and maintain an account with the horsemen's bookkeeper, subject to the approval of the executive secretary [~~commission~~]. The aggregate of all such accounts is the horsemen's account.

(2) The horsemen's bookkeeper shall keep accurate records of the horsemen's account and the constituent accounts. The horsemen's bookkeeper shall:

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

(D) perform all other duties and functions as may be required by the Act or the Rules [~~commission's rules~~].

(d) Audit. The executive secretary [~~commission~~] may at any time inspect, review or audit the records and performance of the horsemen's bookkeeper.

[~~(e) Temporary provision. Until September 1, 1998, the commission may approve contracts submitted by an association for the provision of horsemen's bookkeeper services.~~]

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

Filed with the Office of the Secretary of State, on August 16, 2000.

TRD-200005806
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §§313.101 - 313.104, 313.106 - 313.108, 313.110

The Texas Racing Commission proposes amendments to §§313.101-313.104, 313.106-313.108, and 313.110. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the eligibility requirements for entering horses in pari-mutuel races, changes the workout requirements for eligibility to race, change the minimum age requirement for a two- year old horse to race, and require a horse registered by two breed registries to declare and race as only one breed during each race meeting. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that pari-mutuel racing will be safer and more humane for race horses, that the patrons will receive more consistent and accurate information with which to wager, and the Commission's rules will be consistent with current industry practice and will be internally consistent.

There may be fiscal implications for small businesses or microbusinesses and anticipated economic cost to an individual required to comply with the amendment to §313.103(i) as proposed. The owner of a two-year old horse foaled after March 1 will not be permitted to race that horse until the horse is 24 months old and the horse will not be able to earn purse money during that period. Further, a racetrack may have difficulty obtaining a sufficient number of horses old enough to participate in futurity races scheduled early in the year. The Commission believes that although in the first few years after the proposal takes effect some horses will be prevented from racing in early futurity races, the industry will adjust and the number of available two-year olds for these races will eventually increase. The Commission believes the potential for harm to horses younger than 24 months forced to race early outweighs the transitory economic costs to the industry.

There may be anticipated economic cost to an individual required to comply with the amendment to §313.103(j) as proposed. The owner of a horse that is registered with two breed registries will be required to declare the breed as which the horse will race in each race meeting. As a result, the horse will not be permitted to compete in races for the breed not selected. The Commission believes the number of duly registered horses is small and therefore, the total number of individuals affected is relatively few. The Commission believes further that the anticipated cost to these few individuals is outweighed by the assurance that the wagering public has more accurate information with which to wager.

The proposal will have no effect on the state's agricultural, greyhound breeding, or greyhound training industries. The proposed amendment to §313.103(i) and (j) will have an effect on the state's horse breeding and horse training industries. The change in the minimum age will necessitate the horse breeding industry to strive to have mares in foal earlier in the season consequently to produce foals earlier in the season. As stated earlier, two-year olds foaled late in the season will not be able to participate in early futurity races, requiring adjustments in the training schedule for those horses. Similarly, the restriction on racing for duly registered horses may discourage the breeding of horses that are eligible for dual registration and may require adjustments in the training schedules for the affected horses.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; §9.01, which authorizes the Commission to approve rules promulgated by the official horse breed registries; and §11.01, which authorizes the Commission to adopt rules regulating the conduct of pari-mutuel wagering.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.101. Entry Procedure.

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

(c) An entry may be made by telephone or facsimile [~~telegraph~~], but must be confirmed in writing not later than three hours before post time for the first race on the day the entry is to run.

(d)-(e) (No change.)

§313.102. Intent and Authority.

(a) An individual may not enter or attempt to enter a horse for a race unless:

(1) the individual is authorized under the Rules [~~rules of the commission~~] to make the entry; and

(2) [~~unless~~] the entry is bona fide, made with the intent that the horse compete in the race in which it is entered.

(b) (No change.)

§313.103. Eligibility Requirements.

(a) To be entered in a race, a horse must:

(1) (No change.)

(2) be eligible to enter the race under the conditions of the race; and

[~~(3) be present on association grounds not later than the time prescribed by the commission veterinarian; and~~]

(3) [~~(4)~~] if the horse is to start for the first time:

(A) [~~have two published workouts and~~] be approved by a licensed starter for proficiency in the starting gate within 90 days of the race entered; and

(B) have two published workouts, one within 90 days and one within 45 days of the race entered.[~~, if the horse is to start for the first time.~~]

(b)-(e) (No change.)

(f) Except as otherwise provided by this section for first- time starters, to be eligible to start in a race, a horse must have either started in a race or had a published workout in the 45-day period preceding a race. [~~If a horse has started in a race in the 45-day period preceding a race, there is no workout requirement for eligibility to start. If a horse has not started in the 45-day period preceding a race, the horse must have one published workout to be eligible to start in that race.~~]

(g) To be entered in a race around a turn for the first time, a quarter horse must:

(1) have a published workout around a turn at a minimum distance of 660 yards in the 45-day period preceding the race; and

(2) be approved by the clocker, the outrider and, if the horse is worked from the gate, the starter.

(h) (No change.)

(i) Age restrictions.

(1) A horse may not start in a race until two years after the horse's foaling date.

(2) A horse may not start in a race:

(A) for two-year old quarter horses longer than 350 yards before May 1 or longer than 400 yards before August 1; or

(B) for two-year old thoroughbreds longer than 4 1/2 furlongs before May 1 or at one mile or longer before August 1.

(3) A horse that is more than 12 years of age may not start in a pari-mutuel race in this state, unless the horse has won a race at an officially sanctioned pari-mutuel racetrack during the 12- month period preceding the race in which the horse is to start.

(j) A horse may not participate as a member of more than one breed at the same race meeting, even though the horse may be registered in more than one breed registry.

§313.104. Registration Certificates.

(a) A certificate of registration or eligibility certificate filed with an association to establish eligibility of a horse to be entered in a race must accurately reflect the correct and true ownership of the horse. The stewards may authorize the entry of a horse with a pending transfer. [~~Transfer documents must be completed by the breed registry which issued the certificate of registration prior to entry. Stewards may authorize the entry of a horse with a pending transfer provided the steward has completed the official Texas Bred transfer report.~~]

(b)-(e) (No change.)

§313.106. Closing Entries.

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

(d) If a race is canceled [~~declared off~~] because of insufficient entries, the racing secretary may split any overnight race or write a substitute race in place of the canceled race.

(e) (No change.)

§313.107. Draw for Post Position.

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

(c) No later than scratch time or at the draw if there is no scratch time, the owner or trainer of the horse shall designate the jockey who will ride the horse in the race.

§313.108. Preferred List.

(a) (No change.)

(b) The racing secretary shall update daily the preference designation for each horse, based on the races for which the horse has been entered, started, or scratched [~~declared out of the race~~]. A trainer or owner may file a [~~any~~] claim of error in the preferred list with the racing secretary.

(c) (No change.)

§313.110. Coupled Entries.

(a) Not more than two horses that have common interests [~~ties~~] through ownership, training, or lease may be entered in an overnight race, unless the race is divided.

(b) When a person makes a double entry in an overnight race coupled as a single wagering interest, the person must make a preference for one horse. A second choice has preference over an "in- today" horse.

(c) (No change.)

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

Filed with the Office of the Secretary of State, on August 16, 2000.

TRD-200005805
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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16 TAC §313.111

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

The Texas Racing Commission proposes the repeal of §313.111. The repeal is proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The section proposed for repeal establishes minimum age requirements for race horses. The text of the section is being moved to §313.103 of the Commission's rules and therefore, §313.111 may be repealed.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the proposal.

Ms. Flowerday has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be streamlined and internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the repeal as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed repeal implements Texas Civil Statutes, Article 179e.

§313.111. Age Restrictions.

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 16, 2000.

TRD-200005804
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 2. SCRATCHES

16 TAC §§313.131 - 313.136

The Texas Racing Commission proposes amendments to §§313.131-313.136. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.131. ~~[Declaration and]~~ Scratch Procedure.

(a) A request to [~~declaration or~~] scratch a horse must be in writing on a form provided by the association. Only a racing official, [~~A declaration may be made by~~] the owner or trainer of the horse, or [~~by~~] the authorized agent of the owner may request that the horse be scratched.

(b) A horse may not be [~~declared out of or~~] scratched from a race without the approval of the stewards.

§313.132. Scratch Time.

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

(c) Except as otherwise provided by this subchapter, a horse may not be [~~declared out of or~~] scratched from a race after scratch time for that race.

(d) (No change.)

§313.133. Scratch ~~[Declaration]~~ Irrevocable.

The scratch [~~declaration~~] of a horse from a race is irrevocable.

§313.134. Obligation To Start.

(a) A horse who is entered in a race is obligated to start the race, unless the horse is [~~declared out of or~~] scratched from the race in accordance with this subchapter.

(b) (No change.)

§313.135. ~~[Declaration or]~~ Scratch by Stewards.

(a) The stewards may [~~declare out or~~] scratch a horse from a race when, in the opinion of the commission veterinarian, the horse cannot give its best efforts to win the race due to a physical disability or other physical cause. A horse [~~declared out of or~~] scratched from a race under this subsection shall be placed on the veterinarian's list and is ineligible to start [~~for entry~~] in a race in Texas until removed from the list by the commission veterinarian.

(b) The stewards may scratch [~~declare~~] a horse from [~~out of~~] a race without penalty to the horse or its owner or trainer when the stewards determine the scratch [~~declaration of the horse~~] is in the best interests of racing.

§313.136. ~~[Declaration and]~~ Scratches in Stakes Races.

(a) A horse entered in a stakes race may be [~~declared out of or~~] scratched from the race at any time before one hour before post time for the race.

(b) A horse that is not named through the entry box at the time designated by the racing secretary is automatically scratched from [~~declared out of~~] the stakes race.

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 16, 2000.

TRD-200005803
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 3. ALLOWANCES AND PENALTIES

16 TAC §§313.162, 313.164 - 313.166, 313.168

The Texas Racing Commission proposes amendments to §§313.162, 313.164, 313.165, 313.166, and 313.168. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the types of horses that may claim weight allowances, the responsibilities of the stewards relating to weight allowances, and change the scale of weights for age. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that pari-mutuel racing will be safer and more humane for the race horses and the jockeys, and the Commission's rules will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.162. Claim for Allowance.

(a) (No change.)

(b) Failure to claim an allowance at entry is not grounds to scratch [~~declare~~] a horse from [~~out of~~] the race.

§313.164. Records Conclusive.

In determining the eligibility and weight allowances for a horse, the records of the racing secretary, in conjunction with the statistics and records of the racing form company hired by the association [~~and approved by the commission~~], are conclusive.

§313.165. Sex Allowance.

Except in a race for which the conditions expressly state otherwise, a thoroughbred or arabian filly may claim the following allowances:

(1) a filly that is two years old is allowed three pounds;

(2) a filly that is three years of age or older is allowed:

(A) five pounds, between January 1 and August 31; and

(B) three pounds between September 1 and December 31.

§313.166. Apprentice Allowance.

(a) (No change.)

(b) If during the 12-month period after an apprentice jockey rides the jockey's fifth winning mount the apprentice jockey fails to ride at least 40 winners, the jockey may continue to ride with the five-pound allowance for a second 12-month period after riding the fifth winning mount or until the jockey has ridden 40 winners, whichever occurs first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount unless the stewards have [~~commission has~~] granted an extension under this section.

(c) Extensions.

(1) The stewards [~~commission~~] may extend the weight allowance of an apprentice jockey if the stewards determine [~~commission determines~~] the apprentice jockey was unable to ride for at least seven consecutive days due to:

(A)-(E) (No change.)

(2) An apprentice jockey requesting an extension must provide documentation to the stewards [~~commission~~] verifying the time lost. If an apprentice jockey has requested an extension from another racing commission, the Commission [~~commission~~] is bound by the decision of the other racing commission.

§313.168. Scale of Weights for Age.

(a) Except for a race in which the conditions expressly provide otherwise, the weight to be carried by a thoroughbred or Arabian horse in a race shall be determined in accordance with the following scale.

Figure: 16 TAC §313.168(a)

(b) Except for a race in which the conditions expressly provide otherwise, the weight to be carried by a quarter horse, paint horse, or Appaloosa horse in a race during all months and for all distances shall be as follows:

(1) for two-year olds, 120 pounds;

(2) for three-year olds, 123 pounds; and

(3) for four-year olds and older, 126 pounds.

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 16, 2000.

TRD-200005802
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER C. CLAIMING RACES

16 TAC §§313.302, 313.305, 313.310, 313.312

The Texas Racing Commission proposes amendments to §§313.302, 313.305, 313.310, and 313.312. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify how a claim must be time stamped, the form of payment for claims, and how many horses a trainer may claim in one race. The amendments also clarify the responsibilities between the Commission and the Executive Secretary and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the claiming process for horses will be fairer to all participants and easier to understand and enforce and that the Commission's rules will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.302. Claim Procedure.

(a) (No change.)

(b) A claim must be made in writing on forms and in envelopes approved by the executive secretary [~~commission~~]. The form and envelope must be filled out completely and must be accurate in every detail. For purposes of this section, the name of the horse as it appears in the official program governs.

(c) (No change.)

(d) A claim must be time stamped with the official track time shown on the tote board and deposited in a locked box provided by the racing secretary not later than 15 minutes before post time of the race in which the horse being claimed is to start. A person may not place money or its equivalent in the claim box.

(e) (No change.)

(f) After the deadline for filing claims for a race, a steward or a designee of the stewards shall open the box, examine the claims, and notify the stewards of all accurate claims. The steward or designee will then notify the horsemen's bookkeeper of the claims to determine whether the appropriate amount is on deposit with the bookkeeper in accordance with this subchapter [~~section~~] and to debit the claimant's account for the amount of the claim, plus all applicable fees. If more than one person enters a claim for a horse, a steward or a designee of the stewards shall determine the disposition of the horse by lot.

§313.305. Amounts on Deposit.

(a) To make a valid claim, a person must have on deposit with the horsemen's bookkeeper an amount equal to the amount of the claim, plus all transfer fees, in the form of cash, money order, certified check, or cashier's check. [~~A personal check may be deposited for the amount of the claim and all applicable fees if the check has received prior written approval by the association. The association shall guarantee and be liable for any insufficient funds related to the personal check.~~]

(b) A person who files a claim may not exhaust the person's account with the horsemen's bookkeeper [~~the association~~] during the two-hour period after the claim was filed.

§313.310. Restrictions on Claims.

(a) (No change.)

(b) A person may not claim more than one horse in a race nor submit more than one claim for a race. An authorized agent may not submit more than one claim in a race, regardless of the number of persons the agent represents. A trainer may not be listed as the trainer for a claimant on more than one claim in the same race.

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

§313.312. Protests.

(a) (No change.)

(b) On a finding by the laboratory director that a test specimen from a horse claimed under this subchapter contained a prohibited drug, chemical or other substance, the executive secretary [~~commission~~] shall notify the claimant of the positive test.

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 16, 2000.

TRD-200005795
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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16 TAC §313.311

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

The Texas Racing Commission proposes the repeal of §313.311. The repeal is proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The Commission has determined that claiming should be encouraged and therefore has made the rules for claiming horses less restrictive. Consequently, this section is not consistent with this philosophy and is no longer necessary.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the proposal.

Ms. Flowerday has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the claiming process for horses will be fairer to all participants and easier to understand and enforce. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the repeal as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The repeal is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed repeal implements Texas Civil Statutes, Article 179e.

§313.311. Right to Claim by Depleted Stables.

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 16, 2000.

TRD-200005796
Judith L. Kennison
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Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §§313.406 - 313.411

The Texas Racing Commission proposes amendments to §§313.406-313.411. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the responsibilities between the Commission, the Executive Secretary, and the stewards and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.406. Colors and Number.

(a) A horse starting in a race must carry a conspicuous saddle cloth number, and shall carry a head number, corresponding to its number <u>in</u> [~~of~~] the official program.

(b) The jockey for a horse starting in a race shall be properly attired for riding in the race and wear:

(1) the racing colors provided by the owner of the horse the jockey is to ride, plus white riding pants, boots, and a number on the right shoulder corresponding to the mount's number as shown on the saddle cloth, head number, and in the daily program; and

(2) a helmet of a type approved by the executive secretary [~~commission or its designee~~] while mounted on any horse at a licensed racetrack.

(c) (No change.)

§313.407. Duty To Fulfill Jockey Engagements.

(a) (No change.)

(b) A jockey may be excused by the stewards from fulfilling [~~filling~~] the jockey's riding engagements if:

(1) the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe; or

(2) the jockey is ill or injured.

(c) The stewards may require a jockey who [~~that~~] is excused from fulfilling a riding engagement because of illness or injury to pass a physical examination conducted by a licensed physician before resuming race riding.

(d)-(e) (No change.)

§313.408. Jockey Agents.

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

(d) A jockey must notify the stewards in writing on a form prescribed [~~provided~~] by the executive secretary [~~commission~~] if the jockey intends to sever a business relationship with an agent. The notification must be signed by both the jockey and agent.

§313.409. Jockey Mount Fees.

(a)-(d) (No change.)

(e) If the jockey does not weigh out because the owner or trainer replaces the jockey with another jockey, the owner or trainer shall pay the appropriate fee to each jockey engaged for the race unless otherwise authorized by the stewards.

(f) A horse may not start in a race unless the horse's owner has on deposit with the horsemen's bookkeeper sufficient funds to pay the losing jockey mount fee prescribed by this section [~~rule~~] or by a written agreement filed under subsection (a) of this section.

§313.410. Contracts and Certificates for Jockeys.

(a) An employment contract with a jockey for a period of more than 31 days shall be in writing. The jockey shall file a copy of the contract with the stewards [~~commission~~].

(b) An apprentice jockey may execute a written contract for a period not to exceed three years. If the apprentice jockey is not of legal age to execute contracts, the apprentice jockey may execute the contract only with written consent of the jockey's parent or legal guardian. The apprentice jockey shall file a copy of the contract with the stewards [~~commission~~].

(c) The stewards may issue an apprentice certificate to an apprentice jockey in lieu of a traditional apprentice contract. The stewards shall maintain [~~file~~] a copy of the certificate [~~with the commission~~]. An apprentice certificate is valid for not more than three years and terminates at the time the apprentice jockey loses the right to ride with an apprentice allowance as provided by this chapter.

(d)-(g) (No change.)

§313.411. Suspended Jockeys.

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

(c) The stewards shall post a list [~~listing~~] of the designated races in the jockeys' room, racing office, and any other place determined to be appropriate by the stewards.

(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 16, 2000.

TRD-200005797
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 2. PRE-RACE PROCEDURE

16 TAC §§313.421, 313.423 - 313.425

The Texas Racing Commission proposes amendments to §§313.421, 313.423, 313.424, and 313.425. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments conform the rules to current practice, clarify the responsibilities between the Commission, the Executive Secretary, and the stewards, and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering

the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.421. Horses to Pre-race Holding Area.

(a) (No change.)

(b) The commission veterinarian shall report to the stewards the failure of a horse to report to the pre-race holding area at the appropriate time. The stewards may scratch [~~declare~~] a horse from [~~out of~~] the race if the horse is reported under this subsection.

(c) (No change.)

§313.423. Parade.

(a) For purposes of the schooling list, the horses are under the control of the starter from the time the horses leave the paddock [~~enter the racetrack~~] until dispatched at the start of the race.

(b) Except as otherwise provided by this section, each horse entered in a race shall parade, carrying the appropriate weight and equipment, from the paddock to the starting gate. The lead pony for a horse shall be ridden in a manner that permits adequate view of the horse by the patrons and stewards. The stewards may scratch [~~declare~~] a horse from [~~out of~~] the race if the horse fails to parade in accordance with this section.

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

§313.424. Leaving the Race Course.

(a) A horse that leaves the race course during the parade to the starting gate or during the warm-up shall return [~~to the race~~] at the nearest practicable point to where the horse left the race course, and continue the parade to the starting gate.

(b) The stewards shall scratch [~~declare~~] a horse from [~~out of~~] the race, if during the parade or warm-up, the horse leaves the race course to the extent that the horse is out of the vision of the stewards or the horse cannot be returned to the race course within a reasonable period of time.

(c) If a horse leaves the race course or loses its jockey during a race, the stewards shall disqualify the horse and consider it to be unplaced [~~place it last~~].

§313.425. At the Starting Gate.

(a) (No change.)

(b) The starter shall immediately [~~promptly~~] report to the stewards any reason for a delay in the start.

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 16, 2000.

TRD-200005798
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 3. THE RACE

16 TAC §§313.442 - 313.444, 313.446, 313.447, 313.449, 313.450

The Texas Racing Commission proposes amendments to §§313.442, 313.443, 313.444, 313.446, 313.447, 313.449, and 313.450. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the grounds for the stewards to declare interference, the relative responsibilities of the Commission, the Executive Secretary, and the stewards, conform the rules to current practice, and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.442. Interference.

(a) A leading horse in a race around a turn is entitled to any part of the course; however, when another horse is attempting to pass in a clear opening, the leading horse may not impede the passing horse by crossing over so as to compel the passing horse to shorten its stride. A leading horse in a straightaway race must maintain a course as nearly as possible in the lane in which it starts.

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

(d) The stewards shall display the inquiry sign on the [~~infield~~] tote board immediately on observing possible interference.

§313.443. Action by Jockeys.

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

(d) A jockey who acts in violation of this section is subject to discipline by the stewards [~~or the commission~~] and the jockey's mount may be disqualified.

§313.444. Dismounting.

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

(c) Immediately on dismount and removal of equipment, the [~~The~~] jockey shall go [~~immediately on dismount and removal of equipment~~] to the clerk of the scales to weigh in.

§313.446. Claim of Interference.

(a) A jockey, trainer, or owner of a horse may make a claim of interference with the stewards before a race is declared official if the jockey, trainer, or owner has reasonable grounds to believe the horse was interfered with or impeded during the running of the race or that a jockey violated the Rules [~~as rule of the commission~~] during the race. On receiving a claim of interference, the stewards shall display the objection sign on the [~~infield~~] tote board.

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

§313.447. Ramifications of Disqualification.

(a) (No change.)

(b) If a horse is disqualified for interference in a time trial race, the horse shall receive the time of the horse it is placed behind, plus a one-hundredth of a second [~~penalty~~], or a more exact measurement if photofinish equipment permits. The horse may be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

§313.449. Official Order of Finish.

(a) The stewards shall declare the order of finish in a race [~~is~~] official when the stewards have determined:

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

(3) the race was run in accordance with the Act and the Rules [~~rules of the commission~~].

(b) On declaring the official order of finish, the stewards shall direct:

(1) (No change.)

(2) the official sign to be posted on the [~~infield~~] tote board; and

(3) (No change.)

(c) (No change.)

§313.450. Time Trial Qualifiers.

(a) When two or more horses in different trial races [~~time trial contestants~~] have the same qualifying time, to a degree of one-hundredth of a second, or more exact measurement if photofinish equipment permits, for fewer available positions in the finals or consolations [~~necessary for all contestants~~], the stewards shall conduct a draw by lot.

(b) A horse [~~contestant~~] may not draw into the finals or consolations instead of a horse [~~contestant~~] that finished ahead of the horse [~~contestant~~].

(c) (No change.)

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

Filed with the Office of the Secretary of State, on August 16, 2000.

TRD-200005800
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER E. TRAINING FACILITIES

16 TAC §§313.501 - 313.505, 313.507

The Texas Racing Commission proposes amendments to §§313.501-313.505 and 313.507. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the relative responsibilities of the Commission and the Executive Secretary, and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§313.501. Training Facility License.

(a) A training facility must be licensed by the Commission [~~commission~~] in accordance with this section to provide official workouts. Except as otherwise provided by this subchapter, an official workout obtained at a training facility licensed under this section satisfies the workout requirements of §313.103 of this title (relating to Eligibility Requirements).

(b) A training facility license expires on December 31 of the year in which the license was issued. The annual fee for a training facility license is $1,500, which is due and payable to the Commission [~~commission~~] on receipt of the license certificate.

(c) (No change.)

§313.502. Application for License.

(a) To apply for a training facility license, a person must file an application form prescribed by the Commission [~~commission~~] at the Commission [~~commission~~] office in Austin.

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

§313.503. Physical Plant.

(a) To be eligible for a training facility license, the applicant [~~facility~~] must provide the equipment and facilities prescribed by this section.

(b) (No change.)

(c) The dimensions of the racetrack at the training facility must be surveyed by a certified land surveyor, including the distances from each distance pole to the finish line. The results of the survey must be submitted in writing with the application for a training facility license. If neither the track dimensions nor the distance poles have been altered since the date an original training facility license was granted, the general manager or chief executive officer of the training facility may submit a sworn affidavit stating that fact in lieu of a new survey. If the track dimensions or distance poles have been altered since the date the original training facility license was granted, the racetrack must be surveyed by a certified land surveyor and the results submitted to the Commission [~~commission~~] in writing with the application for license renewal.

(d) A training facility shall provide an inside contour rail and an outside rail, both of which must be approved by [~~the commission or~~] the executive secretary. The turns on the racetrack must be banked to a degree approved by [~~the commission or~~] the executive secretary. The composition of the racing surface must be approved by the [~~commission or~~] executive secretary. A training facility shall provide a padded starting gate approved by [~~the commission or~~] the executive secretary. The training facility shall provide timing equipment that is capable of recording the time of a horse in at least hundredths of a second. The timing equipment is subject to testing and approval by [~~the commission or~~] the executive secretary.

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

§313.504. Operational Requirements.

(a) The primary business of a training facility must be the training of race horses. The training facility must be available to provide official workouts on a schedule approved by the executive secretary [~~commission~~], but at least three days per week.

(b) (No change.)

(c) A training facility licensee shall ensure that veterinary services and facilities are available to the training facility in close enough proximity to permit a response time of one hour or less. The veterinary services and facilities are subject to the approval of the executive secretary [~~commission~~].

(d) A training facility licensee shall maintain records regarding the management and operation of the training facility and the records are subject to inspection by the executive secretary [~~commission or the commission staff~~]. A training facility licensee shall cooperate fully with the Commission [~~commission~~], the executive secretary [~~commission staff~~], and the Department of Public Safety in the regulation of training facilities and shall promptly provide any information requested by the Commission [~~commission~~], the executive secretary [~~commission staff~~], or the Department of Public Safety.

(e) (No change.)

(f) A training facility licensee shall comply with all the requirements of this subchapter. Failure [~~and failure~~] to continuously comply with those requirements is grounds for disciplinary action by the Commission [~~commission~~], including suspension or revocation of the training facility license.

(g) The facilities and operations of a licensed training facility are subject to inspection and verification by the executive secretary [~~commission or its staff~~] at any time. If the executive secretary determines that inappropriate or unsafe conditions exist at the training facility or that the integrity of workouts obtained at the facility are in question, the executive secretary may immediately notify the pari-mutuel racetracks in this state that workouts obtained at the facility may not be accepted as official workouts. The executive secretary shall notify the general manager or chief executive officer of the licensed training facility of the executive secretary's findings and specifically describe the corrective action necessary to make the facility's workouts official, to rectify the inappropriate condition, or to make the conditions safe. The training facility may take the necessary corrective action or request a hearing on the executive secretary's findings.

(h) (No change.)

§313.505. Workout Requirements.

(a) All official workouts must be supervised by the following officials, who must be licensed and approved by the executive secretary [~~commission~~]:

(1) a timer/clocker;

(2) a horse identifier; and

(3) a starter.

(b) The person riding a horse in an official workout and the person bringing a horse to a licensed training facility for an official workout must hold a valid Commission [~~commission~~] license in the appropriate category.

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

(f) An individual may not ride a horse in an official workout unless the individual is wearing a properly fastened helmet of a type approved by the executive secretary [~~commission~~].

(g) Each official workout must be recorded on a form prescribed by the executive secretary [~~commission~~]. Not later than 24 hours after the day of an official workout, a training facility shall transmit the results of the workout to:

(1) the official past performance publisher;

(2) the Commission [~~commission~~]; and

(3) each pari-mutuel horse racetrack in this state that is:

(A) conducting a live race meeting for the same breed of horse as the horse that was worked; or

(B) will, in 45 days or less after the date of the workout, commence a live race meeting for the same breed of horse as the horse that was worked.

(h) (No change.)

§313.507. Employees of Training Facilities.

(a) The general manager and chief executive officer of a licensed training facility must obtain a training facility employee license from the Commission [~~commission~~]. The license fee for a training facility employee license is $20. A training facility employee license may be denied, suspended, or revoked for any of the grounds listed in the Act, §7.04.

(b) A training facility employee license does not entitle the licensee to participate in pari-mutuel racing in this state but, except as provided by the Act or the Rules [~~applicable commission rule~~], the licensee is not prohibited from obtaining a license to participate in pari-mutuel racing. A person who holds a Commission [~~commission~~] license to participate in pari-mutuel racing may work at a licensed training facility in the appropriate capacity.

(c) A person holding a training facility employee license is subject to the Rules [~~all commission rules~~] that regulate the behavior and privileges of individual licensees of the Commission [~~commission~~]. By accepting a license issued by the Commission [~~commission~~], the licensee consents to:

(1) a search by the Commission [~~commission~~] of the person and the person's possessions at the training facility to check for violations of the Act or the Rules [~~commission's rules~~];

(2) seizure of contraband prohibited by §311.215 [~~§311.16~~] of this title (relating to Contraband); and

(3) testing for alcohol and controlled substances in accordance with Chapter 311 of this title (relating to Other Licenses [~~Conduct and Duties of Individual Licensees~~]).

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 16, 2000.

TRD-200005801
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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CHAPTER 315. OFFICIALS AND RULES OF GREYHOUND RACING

SUBCHAPTER A. OFFICIALS

DIVISION 1. APPOINTMENT OF OFFICIALS

16 TAC §§315.1 - 315.3

The Texas Racing Commission proposes amendments to §§315.1, 315.2, and 315.3. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the responsibilities between the Commission, the Executive Secretary, and the racing judges and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there are no fiscal implications for state or local government as a result of enforcing the proposals.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be easier to understand and enforce and will be internally consistent. There will be no fiscal implications for small or micro- businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§315.1. Required Officials.

(a) (No change.)

(b) An individual may not serve as an official unless the individual has been approved by the executive secretary [~~or appointed by the commission~~]. Not later than the 30th day before the first day of a race meeting, an association shall submit to the executive secretary [~~a document containing~~] the name of each individual appointed to serve as an official at the race meeting. If the executive secretary determines that an individual is qualified to perform the duties required of the official position for which the individual is submitted and may be issued a license by the commission, the executive secretary shall approve the appointment of the individual.

(c) (No change.)

§315.2. Racing Judges.

(a) To be eligible to be employed [~~for appointment~~] as a racing judge, an individual must:

(1) (No change.)

(2) pass an optical examination conducted annually [~~not more than 90 days before the appointment,~~] indicating 20-20 vision, corrected, and the ability to distinguish colors;

(3) (No change.)

(4) pass a written examination prescribed by the executive secretary; and

[~~(5) participate in an oral interview conducted by the executive secretary; and~~]

(5) [~~(6)~~] demonstrate to the executive secretary's satisfaction that the individual's income from sources other than as a racing judge is unrelated to patronage of or employment by a licensee of the commission.

(b) (No change.)

§315.3. Substitute Officials.

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

(c) If an approved official becomes unavailable to serve, the association may appoint a substitute official with the approval of the racing judges[~~executive secretary~~]. The substitute official must obtain a commission license before assuming his or her duties. [~~Not later than seven days after an association official is removed or transferred, the association shall provide to the commission a written report describing in detail the circumstances of and the reasons for the removal or transfer.~~]

(d) (No change.)

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

Filed with the Office of the Secretary of State, on August 17, 2000.

TRD-200005831
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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DIVISION 2. DUTIES

16 TAC §§315.31 - 315.35, 315.40

The Texas Racing Commission proposes amendments to §§315.31-315.35 and 315.40. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the responsibilities of the racing officials to conform to current industry practice. The amendments also clarify the responsibilities between the Commission, the Executive Secretary, and the racing judges and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice, will be easier to understand and enforce, and will be internally consistent. There will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§315.31. Racing Judges.

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

(c) The racing judges are authorized [~~have the power~~] to:

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

(3) review applications for individual licenses submitted at a racetrack and make recommendations [~~to the commission~~] regarding the issuance of individual licenses;

(4)-(10) (No change.)

(d) The racing judges shall prepare a report of actions taken and observations made during each performance. The report must contain the name of the racetrack, the date, a designation of matinee or evening [~~night~~] performance, the weather and track conditions, inquiries and objections, and any unusual circumstances or conditions. The report must be signed by each racing judge and be filed with the executive secretary on a weekly basis.

(e) The racing judges shall maintain a detailed log of the racing judges' official activities. The log must describe all questions, disputes, protests, complaints, or objections brought to the attention of the racing judges and all interviews, investigations, and rulings made by the judges. The log must be available at all times for inspection by the executive secretary [~~commission or a representative of the commission~~].

(f) (No change.)

(g) The racing judges shall determine the order of finish of a race by the relative position of the muzzles, or if a muzzle is lost or hanging, of the noses, of each greyhound. [~~The racing judges shall immediately notify the mutuel department of the numbers of the first four greyhounds.~~]

(h) The racing judges may not declare a race official until they have determined which greyhounds finished first, second, third, and fourth. The racing judges shall immediately notify the mutuel department of the numbers of the first four greyhounds.

(i) (No change.)

(j) Except as otherwise provided by this section, if the racing judges decide to consult an image [~~a photograph~~] from the photofinish equipment, the racing judges may declare the placements of the greyhounds which they have determined to be unquestionable. The photofinish equipment required by these rules is to be merely an aid to the racing judges, and the racing judges' decision is final[~~, subject only to appeal to the commission~~].

(k) (No change.)

§315.32. Commission Veterinarian.

The commission veterinarian shall supervise all veterinary practices on association grounds, advise the executive secretary [~~commission~~] and the racing judges on all veterinary matters, and perform all other duties required by the executive secretary [~~commission~~] or the Rules [~~these rules~~].

§315.33. Paddock Judge.

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

(g) The paddock judge shall supervise the training of each leadout before a race meeting. The training must include the proper method for leading a greyhound, the handling of blankets, muzzles, and leashes, and general care and maintenance of the greyhound while in the leadout's custody. [~~The paddock judge shall notify the racing judges when the training for each leadout has been completed.~~]

§315.34. Starter.

(a)-(d) (No change.)

(e) The starter shall supervise the leadouts to ensure the greyhounds are loaded to the proper post position.

§315.35. Clerk of Scales.

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

(c) The clerk of scales shall report promptly to the racing judges any violation of these rules regarding weight or weighing.

(d) The clerk of scales shall require a greyhound to remain on the scales until [~~there is a sufficient lack of "jump" in scales action to obtain~~] an accurate weight measurement of the greyhound is obtained [~~being weighed~~].

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

§315.40. Kennel Master.

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

(c) The kennel master shall supervise the leadouts in the placing of the greyhound in the proper [~~receive a greyhound from its trainer, one at a time, and ensure that the greyhound is placed in its~~] crate until removed for racing. The kennel master or the kennel master's assistant shall remain on guard in the paddock area from weigh-in time until the greyhounds are removed for the last race.

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 17, 2000.

TRD-200005830
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §§315.102, 315.103, 315.105 - 315.107, 315.110

The Texas Racing Commission proposes amendments to §§315.102-315.103, 315.105-315.107, and 315.110. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the eligibility requirements for greyhounds to participate in a pari-mutuel race, the procedures for entering and running stakes races, and issues relating to entry, nominating, sustaining, and starting fees. The amendments also clarify the responsibilities between the Commission, the Executive Secretary, and the racing judges and conform terminology to current Commission rule style and industry usage.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice, will be easier to understand and enforce, and will be internally consistent. There will be no fiscal implications for small businesses or micro- businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of each racing official; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§315.102. Entry Procedure.

(a)-(d) (No change.)

(e) A joint [~~subscription or~~] entry may be made by one or more owner of a greyhound. If the ownership interests in a greyhound are equally divided, each owner is jointly and severally liable for all fees and forfeits.

(f) The racing officials may require a person in whose name a greyhound is entered to produce proof that the greyhound is [~~not~~] owned only by persons licensed [~~in any part by a person who is not eligible~~] to participate in pari-mutuel racing [~~or proof of the extent of the person's ownership in the greyhound~~]. The racing judges may declare the greyhound out of a race if the person fails to comply with a demand made under this subsection.

(g)-(i) (No change.)

(j) A greyhound whose entry is ordered refused at a racetrack in any jurisdiction because of inconsistent racing or erratic racing performance for no apparent reason may not enter a race at any licensed racetrack [~~association grounds~~] in this state until:

(1) the greyhound has been successfully schooled at the racetrack at which the greyhound is to compete; and

(2) the person making the entry has received the approval of the racing judges.

(k)-(l) (No change.)

(m) If a race does not fill and is cancelled [~~declared off~~], the racing secretary shall conspicuously post the names of the greyhounds that had entered the race not later than 9:00 p.m. of the day the race is cancelled [~~declared off~~].

§315.103. Eligibility to Enter or Start.

(a) A greyhound that is entered in a purse race shall start in the race, unless the greyhound is [~~declared or~~] scratched.

(b) A greyhound may not enter or start in a race if:

(1) the greyhound is disqualified from entry or start;

[~~(2) a person owning or controlling an interest in the greyhound, or the spouse of such a person, is not eligible to participate in pari-mutuel racing;~~]

(2) [~~(3)~~] the greyhound has not been conditioned by a licensed trainer; or

(3) [~~(4)~~] the greyhound is on the official schooling list or the veterinarian's list.

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

§315.105. Stakes Race[~~Sweepstakes~~].

(a) Except as provided by the published notice of a stakes race [~~sweepstakes~~], entries [~~and declarations~~] for astakes race [~~sweepstakes~~] which close during or on the eve of a race meeting, close at the racing secretary's office. Entries and declarations for a sweepstakes that closes at another time close at the association's office.

(b) An entry or declaration for a stakes race [~~sweepstakes~~] may not be received after the hour designated for closing. If an hour is designated, an entry or declaration may be mailed or sent by facsimile before midnight of the day of closing, provided the entry or declaration is received by the racing secretary with adequate time to comply with all other conditions of the race.

(c) A nomination for a stakes race[~~sweepstakes~~] [~~received and postmarked before midnight of the day of closing~~] is valid if it is received by the racing secretary at least 24 hours before the close of [~~overnight~~] entries for overnight races to be held on the same day at the stakes race.

(d) If an entry [~~or declaration~~] for a stakes race [~~sweepstakes~~] that was sent by mail or facsimile [~~telecopy~~] is not timely received, the person sending the entry or declaration must present to the racing secretary proof of the mailing or facsimile [~~telecopy~~] not later than 24 hours after the deadline for receipt of the entry or declaration. The racing secretary may not accept an entry or declaration for which proof is not submitted in accordance with this subsection.

(e) If a greyhound does not compete in a stakes race in which the greyhound was entered, the owner of the greyhound forfeits all nominating, sustaining, and stating fees paid in behalf of the greyhound. [~~An entry in a sweepstakes is a subscription and may not be withdrawn.~~]

§315.106. Liability for Entry Fee.

(a) (No change.)

[~~(b) If a person who sells a greyhound with engagements or a person who transfers entries is compelled to pay arrears through the default of the purchaser or transferee, the person may place the amount on the forfeit list as due to the person from the purchaser or transferee.~~]

[~~(c) If a person is prevented from entering or starting a greyhound in a race because of arrears for which the person would not otherwise be liable, the person may pay the arrears, enter or start the greyhound, and place the amount of the arrears on the forfeit list as due to the person.~~]

(b) [~~(d)~~] With the prior approval of the racing judges, the racing secretary may waive the obligation to pay arrears by a person who has sold a greyhound with engagements or transferred entries.

§315.107. Payments of Nominating, Sustaining and Starting Fees [~~Entry Money~~].

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

[~~(c) A person with a claim against a greyhound, such as a mortgage, bill of sale, or lien, must file the claim with the racing secretary to be entitled to receive a portion of the greyhound's winnings. A claim filed under this subsection may be satisfied only by winnings earned after the claim was filed with the racing secretary.~~]

(c) [~~(d)~~] If a stakes race is not run for any reason, the association shall refund all nominating, sustaining, and starting [~~entry~~] fees paid, if any.

(d) [~~(e)~~] In an emergency, an association may postpone or cancel [~~declare off~~] a race or stakes race with the approval of the racing judges. [~~after giving adequate public notice.~~] The association shall refund all nominating, subscribing and starting fees [~~subscriptions and declaration money~~] for a race [~~postponed or declared off~~] under this section [~~subsection~~].

§315.110. Scratches.

(a) A greyhound may be scratched from a race only with the approval of the racing judges. A request to scratch a greyhound may be made only by the owner, trainer, or authorized agent of the owner or trainer. The request must be filed with the racing secretary at least 30 minutes before the time designated for the drawing of post positions or the time designated by the racing secretary.

(b) A scratch that occurs as a result of a violation of a racing rule carries a penalty and/or suspension of the greyhound for six race days. The racing judges shall review the cause for a scratch and may take disciplinary action. If a greyhound is scratched because the owner or trainer of the greyhound fails to have the greyhound at the track at the appointed time for weighing-in, the racing judges may impose take disciplinary action against [~~a penalty on~~] the person responsible.

(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 17, 2000.

TRD-200005829
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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16 TAC §315.109

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

The Texas Racing Commission proposes the repeal of §315.109 relating to declarations. The repeal is proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The section proposed for repeal governs declarations made by a greyhound owner or trainer to take a greyhound out of a race. Under current usage, greyhounds are not declared out of races but rather are scratched. Because scratches are covered by §315.110, this rule is unnecessary and may be repealed.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice, will be easier to understand and enforce, and will be internally consistent.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with current industry practice, will be easier to understand and enforce, and will be internally consistent. There will be no fiscal implications for small businesses or micro- businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§315.109. Declarations.

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 16, 2000.

TRD-200005809

Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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SUBCHAPTER C. RACE PROCEDURES

16 TAC §§315.209, 315.211

The Texas Racing Commission proposes amendments to §§315.209 and 315.211. The amendments are proposed as part of a rule review conducted pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13. The amendments clarify the relative responsibilities between the Commission and the Executive Secretary and conform the rules relating to objections to the current statute.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, 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 the proposal.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the proposal will be that the Commission's rules will be consistent with state law, will be easier to understand and enforce, and will be internally consistent. There will be no fiscal implications for small businesses or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The proposal will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before October 2, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §2.21, which authorizes the Commission to adopt rules clearly separating the policymaking responsibilities of the Commission and the management responsibilities of the Executive Secretary; §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§315.209. No Race.

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

(d) The racing judges shall immediately report a "no race" to the executive secretary [~~or a designee of the executive secretary~~], and include a detailed explanation of the cause. Not later than five days after the date of a "no race", the association may apply to the executive secretary [~~commission~~] for a make-up race to replace the "no race".

§315.211. Objections.

(a) An objection regarding a race , other than the actual running of the race, must be made by an owner or the authorized agent of the owner, a trainer of a greyhound engaged in the race, or an official. An objection must be made to the racing judges, who may require that

the objection be made in writing with a copy sent immediately to the executive secretary.

~~[(b) The racing judges may require a cash deposit to cover the costs and expenses of determining an objection. The deposit may be forfeited if the objection proves to be without foundation.]~~

(b) ~~[(c)]~~ Except as otherwise provided by this subsection, an objection must be made to the racing judges not later than 72 hours after the race is run. An objection to a decision of the clerk of scales must be made before the greyhounds leave the paddock for the post.

(c) ~~[(d)]~~ Pending a decision on an objection, any money or prize to which a greyhound that is the subject of the objection would be entitled, shall be held until the objection is decided.

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 16, 2000.

TRD-200005810
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.205, §535.212

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.205, concerning inspectors licensed under a prior law, and §535.212, concerning education and experience requirements for an inspector license. Section 535.205 is proposed for repeal because its provisions have either been placed in other sections or are adequately addressed in Texas Civil Statutes, Article 6573a, §23. Section 535.212 is being replaced with a new section detailing the education and experience requirements for an inspector license and related matters. The repeals have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of nine professional inspectors appointed by TREC, and are proposed in connection with TREC's on-going review of its rules.

Mark A. Moseley, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeals. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the repeals.

Mr. Moseley also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals the elimination of unnecessary rules and clearer guidelines for the education and experience requirements for an inspector license. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeals are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties. The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.205. Inspectors Licensed under Prior Law.

§535.212. Education and Experience Requirements for an Inspector License.

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 16, 2000.

TRD-200005815
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 465-3900

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22 TAC §§535.206, 535.208, 535.212-535.214, 535.216-535.218, 535.221, 535.223, 535.224, 535.226

The Texas Real Estate Commission (TREC) proposes amendments to §§535.206, 535.208, 535.213-535.214, 535.216, 535.218, 535.221, 535.223, 535.224, 535.226 and new §535.212 and §535.217, concerning licensed inspectors. The amendments and new sections are proposed in connection with TREC's on-going review of its rules and are intended to bring the sections into conformity with recent changes to other TREC rules governing the procedures for obtaining and renewing licenses as well as making other substantive changes to the sections. The amendments also would adopt by reference revised application forms and an experience log used by applicants.

The amendment to §535.206 would modify the section to be similar in voice and style with other TREC rules. Archaic language referring to a former registration program would also be eliminated. The amendment to §535.208 would require applicants for the professional inspector license or the real estate inspector license to obtain an education evaluation prior to filing an application. This change would be necessary to permit on-line filing of applications, which would be permitted under the amended section. If the applicant files electronically, the applicant would

be required to complete the process by submitting a printed copy of the application containing a signature and photograph within 60 days after paying the filing fee on-line. The amendment also adopts by reference a revised Inspection Log, a form used by applicants and licensees to show satisfaction of experience requirements, and three revised license application forms. The forms would be changed to obtain a permanent mailing address from the applicant and, at the discretion of the applicant, daytime telephone numbers or e-mail addresses to facilitate curative work by TREC staff.

New §535.212 would adopt revised guidelines for the acceptance of courses submitted by applicants and permit the acceptance of courses offered by a professional trade association, consistent with changes to other TREC rules. Experience requirements for a license are also addressed in the new section. Those applicants who are applying directly for an inspector license or a professional license on the basis of additional coursework would be required to show proportional credit in each of the structural, mechanical and electrical systems. Experience for work in another licensed occupation would be restricted to persons licensed as architects, professional engineers, or engineers-in-training. Applicants who substitute personal work experience would be required to show five years of experience for a real estate inspector license and seven years of experience for a professional inspector license; the experience claimed also would have to be derived from work on each of the three systems found in improvements to real property. These changes would help to ensure that persons licensed without first being sponsored by a professional inspector and performing inspections under supervision are competent to practice as inspectors.

The amendment to §535.213 would clarify that the accreditation and regulation of inspection schools and approval of courses and instructors will be conducted under the same guidelines governing real estate schools and instructors. The amendment also would clarify that a school accredited to offer real estate courses is not required to obtain a separate accreditation to offer inspection courses, provided any inspection courses have been approved by TREC before they are offered. The amendment to §535.214 would delete archaic language referring to the scheduling of an examination.

The amendment to §535.216 would require licensed inspectors on inactive status to provide TREC with a permanent mailing address and report changes to that address within 10 days after the change. The amendment also would permit licenses to be renewed on-line as TREC develops the capacity to handle the inspection renewals in that fashion. If TREC requests information from a licensee in connection with a renewal application, the amendment would require the licensee to furnish the information within 30 days after the request, or be subject to disciplinary action.

New §535.217 addresses conduct by an inspector which may warrant disciplinary action as being dishonest. The new section would require an inspector to disclose and obtain the consent to all parties to a transaction before accepting a fee or other valuable consideration from a person other than the inspector's client. This requirement would ensure that the licensee's intention of accepting a fee or other valuable consideration from a service provider or from a party other than the inspector's client is disclosed to the parties to the transaction and that they have no objection to the acceptance of the fee or consideration. Similarly, the new section would require a licensed inspector to obtain the consent of the inspector's client before paying a portion of the inspector's fee to a service provider or other participant in the real estate transaction for which the inspection has been performed.

The amendment to §535.218 would clarify that, consistent with TREC rules governing real estate courses, completion of a final examination would be required for a course offered by alternative delivery methods, such as by computer. The amendment to §535.221 clarifies that Internet advertising and e-mail are included in the definition of the term "advertisements" and that the name or assumed name of a licensee's sponsoring inspector must be included in the licensee's advertisements. The amendment to §535.223 would update references to the standards of practice governing inspectors. The amendment to §535.224 would delete archaic language referring to registrations and update rule and statutory citations found in the section. The amendment to §535.226 would require inspector licensees to notify each other in writing if either terminates a sponsorship or leaves the sponsorship of a professional inspector. This change would help to ensure that inspectors are aware of any change in license status or responsibility resulting from a change in sponsorship. The amendment also would revise references to the standards of practice for inspectors.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistent and updated sections as well as increased protection for the public when dealing with licensed inspectors. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and new sections are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties. The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.206. The Texas Real Estate Inspector Committee.

(a) The composition and functions of the committee are[~~shall be~~] as prescribed by Texas Civil Statutes, Article 6573a, §23.

(b) (No change.)

(c) The committee shall conduct its meetings[~~Meetings of the committee shall be conducted~~] in substantial compliance with Robert's Rules of Order.

(d) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.[~~Minutes of each meeting shall be prepared by the secretary of the committee, or in the secretary's absence, by a member designated by the chairman. Minutes shall be submitted to the committee for approval and shall be filed with the commission upon approval.~~]

(e) (No change.)

(f) Hearings before the committee concerning the [~~registration,~~] licensing[~~,~~] or discipline of real estate inspectors will [~~shall~~] be conducted in accordance with §535.224 of this title (relating to Proceedings before the Committee).

§535.208. Application for a License.

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission. Prior to filing an application for a real estate inspector license or for a professional inspector license, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license. The commission may require an applicant to furnish materials such as source outlines, syllabi, course descriptions or official transcripts to verify course content or credit. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license unless the applicant:

(1) (No change.)

(2) satisfies any experience or education requirements established by the Real Estate License Act (the Act), §23, or by these sections [~~, providing written proof from the course provider that successful completion of a final course examination or other form of final evaluation was required for course credit~~];

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

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting to the commission a printed copy of the application signed by the applicant and any sponsoring inspector and including a photograph of the applicant. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) [~~(b)~~]The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Inspection Log, Form REI 1-3;

(2) [~~(1)~~]Application for a License as an Apprentice Inspector, Form REI 2-6 [~~2-5~~];

(3) [~~(2)~~]Application for a License as a Real Estate Inspector, Form REI 4-7 [~~4-6~~]; and

(4) [~~(3)~~]Application for a License as a Professional Inspector, Form REI 6-7 [~~6-6~~].

(d) [~~(c)~~] An application shall be considered void and subject to no further evaluation or processing when one of the following events occurs.

(1) The applicant fails to satisfy a required examination within six months from the date the application is accepted for filing.

(2) The applicant fails to provide information or documentation within 60 days after the commission makes written request for the information or documentation.

(3) The applicant fails to submit a required fee within 60 days after the commission makes written request for payment of the fee.

(e) [~~(d)~~]An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in the Act, §10 and §533.34 of this title (relating to Disapproval of an Application for a License or Registration) [§535.224 ~~of this title (relating to Proceedings before the Committee)~~]. For the purposes of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

(f) [~~(e)~~] Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license for an apprentice or a real estate inspector.

§535.212. Education and Experience Requirements for an Inspector License.

(a) Educational requirements.

(1) To be accepted for inspector licensing, a course must meet each of the following requirements.

(A) The course was devoted to a subject listed in Texas Civil Statutes, Article 6573a (the Act), §23(a)(3); provided, however, no more than 30 cumulative classroom hours in course credit may be accepted by the commission for inspection-related business, legal, report writing or ethics courses

(B) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(C) Successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(D) The daily course presentation did not exceed ten hours.

(E) The course was offered by one of the following providers:

(i) a school accredited by the commission;

(ii) a school accredited by an inspector regulatory agency of another state;

(iii) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(iv) a unit of federal, state or local government;

(v) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(vi) a professional trade association; or

(vii) an entity whose courses are approved and regulated by an agency of this state.

(2) The term "code organization" means a non-profit organization whose members develop and advocate scientifically based codes and standards relating to one or more of the systems found in an improvement to real estate. The term "professional trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(3) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by an accredited college or university.

(4) Providers may obtain prior approval of a classroom course by submitting the following items to the commission:

(A) a course description, including the number of hours of credit to be awarded;

(B) a timed course outline;

(C) a copy of any textbook, course outline, syllabus or other written course material provided to students; and

(D) a copy of the written final examination which measures a student's mastery of the course.

(b) Experience requirements.

(1) An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by the Act and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:

(A) For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, with at least 10 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an architect, professional engineer, or engineer-in-training, or has at least five years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(B) For a professional inspector license, the applicant must have completed at least 60 additional hours of core real estate inspection courses acceptable to the commission, with at least 20 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(2) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission will consider an improvement to real property to be any unit which is capable of being separately rented, leased or sold. Subject to the following restrictions, an inspection of an improvement to real property which includes the structural and equipment/systems of the unit will constitute a single inspection.

(A) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(B) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(C) A report which covers two or more improvements will be considered a single inspection.

(D) Real estate inspectors and professional inspectors may not receive experience credit for an inspection performed by an apprentice under their supervision.

(E) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(F) For the purpose of satisfying any requirement that a license be held for a period of time prior to an applicant's being eligible for a license as a real estate inspector or professional inspector, the commission may not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

§535.213. Schools and Courses of Study in Real Estate Inspection.

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection and the approval of instructors will [~~shall~~] be conducted as required for real estate schools by §535.64 [~~§535.66~~] of this title (relating to Accreditation of Schools and Approval of Courses and Instructors [~~Educational Programs: Accreditation~~]), §535.65 of this title (relating to Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records) and §535.66 of this title (relating to Payment of Annual Fee, Audits, Investigations and Enforcement Actions).

(b) A person [~~An entity~~] applying for accreditation of a real estate inspection school shall use application forms approved by the commission [~~submit course material for no less than 90 hours of core real estate inspection courses~~]. All [~~Additional~~] courses must [~~may~~] be approved [~~submitted for approval~~] by the commission prior to being offered for credit. A school accredited by the commission to offer real estate courses is not required to apply for an accreditation under this section to offer real estate inspection courses, provided all courses offered by the school have been approved by the commission. The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.

[~~(c) To be eligible to apply for approval as an instructor in a core real estate inspection course, a person must shall be:~~]

[~~(1) a professional inspector licensed in Texas with a minimum of three years active practice in the areas of study for which approval is sought;~~]

[(2) a person holding a bachelor's or higher degree from an accredited college or university with a minimum of 12 semester credits of course work in the area of study for which approval is sought; or]

[(3) a person found by the commission to possess a background substantially equivalent to paragraph (1) or (2) of this subsection by means of professional or instructional experience.]

[(d) Daily course segments must be at least two hours long but not longer than 10 hours.]

[(e) The provisions of subsection (kk) of §535.66 of this title (relating to Educational Programs: Accreditation) do not apply to a real estate inspection course for which less than 30 hours of credit is given.]

[(f) The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.]

§535.214. Examinations.

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

[(c) The commission shall schedule an applicant to sit for the examination. Examinations may be rescheduled at the request of the applicant unless to do so would extend the time for satisfying the examination requirement beyond the time permitted by the Act.]

§535.216. Renewal of License.

(a) (No change.)

(b) The commission shall mail the prescribed renewal application form to the last known business address of the licensee at least 90 days prior to the expiration of the license. If the license is on inactive status, the form will be mailed to the licensee's last known permanent mailing [residence] address as shown in the commission's computerized records. An inactive licensee shall furnish a permanent mailing address at the time the licensee becomes inactive and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address for the licensee will be deemed to be the licensee's permanent mailing address. [The commission shall have no obligation to mail a form to a licensee on inactive status who fails to furnish the commission with a residence address.] An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the licensee to apply for renewal, and failure to receive a renewal application form does not relieve the licensee of the responsibility of applying for renewal.

(c) If the commission develops a system whereby licenses may be renewed electronically, a licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(d) A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act, §15B(b).

(e) [(c)]Renewal applications filed after expiration of the license are subject to the increased fees provided by the Act, §23(f).[If a license has been expired for no more than two years, a previously licensed person may apply for late renewal of the license. An application for late renewal is an application for a license for which the applicant is not required to satisfy education, experience, or examination requirements for an original license. An application for late renewal of a license filed no more than one year after expiration of the license is subject to the increased fees provided by the Act, §23(f). An application filed more than one year after expiration of the license must be accompanied by the fee provided by the Act, §23(h) for an application for an original license.]

(f) [(d)]A renewal application is deemed filed when placed in the mail properly addressed to the commission with appropriate postage paid.

(g) [(e)]An inspector licensed on active status who timely files a renewal application together with the applicable fee and evidence of completion of any required continuing education courses may continue to practice prior to receiving a new license certificate from the commission. If the license has expired and the licensee files an application to renew the license, the licensee may not practice until the new certificate is received.

§535.217. Dishonest Conduct as Grounds for Disciplinary Action.

For the purposes of Texas Civil Statutes, Article 6573a, (the Act), §23(l), the commission deems the following conduct by a licensed inspector to be dishonest and grounds for disciplinary action:

(1) accepting a fee or other valuable consideration in a transaction from a person, other than the inspector's client, without first disclosing to all parties in the transaction that the inspector intends to receive the fee or other valuable consideration, and obtaining the consent of all parties.

(2) paying a portion of any fee received by the inspector to a service provider or a participant in a real estate transaction, other than the inspector's client, without the consent of the inspector's client.

§535.218. Continuing Education.

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

(c) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

(d) (No change.)

(e) In addition to the core real estate inspection courses defined in the Act, the commission also will accept a course related to wood-destroying insects, radon, asbestos, lead, or other hazardous substances [may also be taken] to satisfy continuing education requirements.

(f) (No change.)

§535.221. Advertisements.

(a) For the purposes of this section advertisements include, but are not limited to, inspection reports, business cards, invoices, signs, all electronic media including E-mail and the Internet, purchased telephone directory displays and advertising by newspaper, radio and television.

(b) Advertisements by a person licensed as an inspector [person licensed as a professional inspector or real estate inspector or licensed as an apprentice inspector] must contain the name or assumed business name of the licensee. [If the person is licensed as a professional inspector, real estate inspector or apprentice inspector, the] The advertisements must also contain the license number of the person. If the person is licensed as a real estate inspector or as an apprentice inspector, the advertisements must also contain the following:

(1) the name or assumed name of the person's sponsoring professional inspector; and

(2) a statement indicating that the person is sponsored by that professional inspector.

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

§535.223. Standard Inspection Reports.

(a) (No change.)

(b) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property must be reported on Form REI 7A-0 ("the form"). Licensed inspectors shall complete the applicable portions of the form and provide the report within a reasonable period of time to the persons for whom the inspection has been performed. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the form is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by the standards of practice adopted by the commission [§535.222 of this title (relating to Standards of Practice)], the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission. If a part, component or system contained in the form is present in the property and has not been inspected under the departure provisions of §535.227 [§535.222] of this title (relating to Standards of Practice: General Provisions), the inspector shall make an appropriate notation on the form, clearly indicating the reason the part, component, or system has not been inspected.

(c)-(g) (No change.)

§535.224. Proceedings before the Committee.

(a) (No change.)

(b) If the committee determines after a hearing that disciplinary action is warranted, the committee may recommend that the commission issue a reprimand, or suspend or revoke a license [or registration]. The committee may recommend that an order of suspension or revocation be probated in whole or in part by the commission or that the probation be subject to reasonable terms and conditions in the manner contemplated by the Act, §15B(d). The committee may recommend that the commission enter a final order denying a license [or registration] or that a probationary license [or registration] be issued in the manner contemplated by §535.94 of this title (relating to Hearing on Application Disapproval; Probationary License).

(c) Proceedings before the committee shall be conducted by the committee in the manner contemplated by §§535.31-533.39 [§§533.1-533.30] of this title (relating to Practice and Procedure) and with the Government Code, Chapter 2001, et. seq. [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a]. The chairman of the committee or a member designated by the chairman shall act as presiding officer and may vote as any other member.

(d) In addition to the grounds for disciplinary action provided in the Act, §23(l), a [registration or] license of an inspector may be suspended or revoked by the commission if the inspector:

(1) fails to make good a check issued to the commission within 30 days after the commission had mailed a request for payment by certified mail to the inspector's last known business address as reflected by the commission's records;

(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the commission or its authorized agent; or

(3) fails within 10 days to provide information requested by the commission or its authorized agent in the course of an investigation of a complaint.

§535.226. Sponsorship of Apprentices Inspectors and Real Estate Inspectors.

(a) (No change.)

(b) A change in sponsorship shall be reported to the commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing. [An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the written notice has been placed in the mail to the commission along with the fee for reporting any change of address. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title (relating to Inactive Inspector Status).]

(c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the written notice has been placed in the mail to the commission along with the fee for reporting any change of address. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title (relating to Inactive Inspector Status).

(d) [(c)]Written inspection reports must be signed by the apprentice inspector who performed the inspection and by the real estate inspector or professional inspector who directly supervised the inspection.

(e) [(d)] A licensed professional inspector is responsible for the conduct of a licensed apprentice inspector sponsored by the professional inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by the following means:

(1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and

(2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the commission [§535.222 of this title (relating to Standards of Practice)].

(f) [(e)]A licensed professional inspector is responsible for the conduct of a licensed real estate inspector sponsored by the professional inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector and any licensed apprentice inspectors directly supervised by the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by doing the following:

(1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector and

(2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the commission [§535.222 of this title (relating to Standards of Practice)].

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 18, 2000.

TRD-200005839
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 465-3900

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400, §535.403

The Texas Real Estate Commission (TREC) proposes amendments to §535.400, concerning registration of easement or right-of-way agents, and §535.403, concerning renewal of registration. The amendments are proposed in connection with TREC's on-going review of its rules and are generally intended to bring the sections into conformity with recent changes to other TREC sections. The amendments also would adopt by reference revised application and renewal forms used by registrants. .

The amendment to §535.400 adopts by reference revised application forms used by individuals and businesses to file for registration. The forms have been modified to obtain a permanent mailing address for the applicant, in addition to e-mail and telephone numbers to facilitate contacts by TREC staff. The amendment also would permit applicants to register on-line once TREC has developed a capacity for such applications. If a person files electronically, the person would be required to complete the application process by submitting a printed copy of the application signed by the applicant and including a photograph of the applicant.

The amendment to §535.403 would permit registrants to renew their registrations on-line once TREC has developed the capacity for them to do so. The registrant would access the TREC Internet web site, enter the required information and pay the appropriate fee in accordance with the instructions provided at the site. The amendment also would adopt by reference a revised renewal application form, which would be changed to obtain a permanent mailing address, rather than a residential address, for each registrant.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistent application and renewal processes for the agency's licensees and registrants. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 2000. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(1) ERW 1-2 [~~1-1~~], Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-2 [~~2-1~~], Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right-of-way agent must file form ERW 1-2 [~~1-1~~] with the commission. If the applicant is a business, the applicant must file form ERW 2-2 [~~2-1~~]. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act). The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. If the commission develops a system whereby a person may electronically file an application for registration, a person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting a printed copy of the application signed by the applicant and including a photograph of the applicant. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

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

§535.403. Renewal of Registration.

(a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the fee required by §11(a)(16) of The Real Estate License Act (the Act). Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. If the commission develops a system whereby registrations may be renewed electronically, a registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §9A(c)(4). A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b) The Texas Real Estate Commission adopts by reference Renewal Application Form ERW 5-1 [5-0], approved by the commission in 2000 [1998]. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(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 18, 2000.

TRD-200005838
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 465-3900

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes the amendment of §651.1, concerning Fees. This section is being amended to make the fees easier to understand, to add a fee for a provisional license, and to raise the fee to go active from inactive. Also the amendment adds the fee for restoration of license, which is currently found only in the Act.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, 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 them.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be increased administrative efficiency and appropriate fees. There will be no effect on small businesses. There are fee changes from $25 to $325 of anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed changes may be submitted to Augusta Gelfand, OT Coordinator, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; email: augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452,Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by this amended section.

§651.1. Occupational Therapy Board Fees.

(a) Regular License

(1) Occupational Therapist--$110

(2) Occupational Therapy Assistant--$85

[(a) Application Fees.]

[(1) Provisional:]

[(A) OTR--$15]

[(B) COTA--$15]

[(2) Temporary, Extended Temporary, or Regular:]

[(A) OT or OTR--$10]

[(B) OTA or COTA--$10]

(b) Temporary License

(1) Occupational Therapist--$50

(2) Occupational Therapy Assistant--$35

[(b) License Fees.]

[(1) Temporary:]

[(A) OT--$90]

[(B) OTA--$65]

[(2) Extended Temporary:]

[(A) OT--$115]

[(B) OTA--$90]

[(3) Provisional:]

[(A) OTR--$35]

[(B) COTA--$25]

[(4) Regular (to birth month):]

[(A) OTR--$50]

[(B) COTA--$35]

[(5) Temporary/Provisional to Regular (to birth month):]

[(A) OTR--$60]

[(B) COTA--$45]

[(6) Active to Inactive/Retiree Status:]

[(A) OTR--$25]

[(B) COTA--$25]

[(7) Inactive to Active Status:]

[(A) OTR--$175]

[(B) COTA--$125]

[(8) Inactive to Retiree Status]

[(A) OTR--$0]

[(B) COTA--$0]

(c) Provisional License

(1) Occupational Therapist--$80

(2) Occupational Therapy Assistant $75

[(c) License Renewal Fees Per Year (on-time).]

[(1) Regular License:]

[(A) OTR--$100]

[(B) COTA--$75]

[(2) Inactive/Retiree:]

[(A) OTR--$0]

[(B) COTA--$0]

(d) Active to Inactive Status

(1) Occupational Therapist--$25

(2) Occupational Therapy Assistant $25

[(d) License Renewal Fees (late).]

[(1) Regular License:]

[(A) Late 90 days or less--Regular fee plus late fee which is equal to one-half of the certification examination fee;]

[(B) Late more than 90 days but less than one year--Regular fee plus late fee which is equal to the certification examination fee.]

[(2) Inactive, OTR or COTA:]

[(A) Late 90 days or less--$12]

[(B) Late more than 90 days but less than one year--$25]

(e) Inactive Status to Active Status

(1) Occupational Therapist $200

(2) Occupational Therapy Assistant $125

(f) Renewal

(1) Occupational Therapist--$200

(2) Occupational Therapy Assistant $150

(g) Late Fees

(1) Late 90 days or less--Regular fee plus late fee which is equal to one-half of the certification examination fee;

(2) Late more than 90 days but less than one year--Regular fee plus late fee which is equal to the certification examination fee.

(h) [(e)] Registration Fees--Facilities.

(1) Registration of First Facility--$300

(2) Registration of Each Additional--Facility $100

(i) [(f)]Renewal Fees--Facilities (on-time).

(1) Renewal of Registration of First Facility--$300

(2) Renewal of Registration of Each Additional Site--$100

(j) [(g)]Restoration Fees--First Facility.

(1) Late 90 days or less--$150

(2) Late more than 90 days but less than one year--$300

(3) Late one year or more--$600

(k) [(h)] Restoration Fees--Each Additional Site.

(1) Late 90 days or less--$50

(2) Late more than 90 days but less than one year--$100

(3) Late one year or more--$200

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 18, 2000.

TRD-200005863
John P. Maline
Executive Director
Executive Council of Physical and Occupational Therapy Examiners
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 305-6900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4008

The Texas Department of Insurance proposes amendments to §5.4008, concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA). The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. The Association's plan of operation specifies in §5.4008 the applicable building code standards to qualify for coverage from the Association for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code for Windstorm Resistant Construction (the code). The proposed amendments are necessary to make editorial and clarifying changes that make the code more user-friendly and easier to use. The proposed amendments are a result of recommendations by the Building Code Advisory Committee on Specifications and Maintenance to expand the available use of the code in the designated catastrophe areas. The advisory committee's recommended changes were submitted to the Commissioner on June 12, 2000, and those recommended changes were accepted by the Commissioner and are to be considered at a rulemaking hearing.

The proposed amendments to the code are as follows:

A. Section 100, General Requirements: Editorial changes were made in this section to clarify the requirements for inspecting structures that are moved.

B. Section 200, Basic Definitions, Assumptions, and Limitations of the Prescriptive Code.

1. 211, Materials. A minimum standard for structural panel siding has been provided. An alternative corrosion resistant standard that is more applicable for threaded rods has been provided.

C. Section 300, Prescriptive Requirements, Area Inland of the Dividing Line and Section 400, Prescriptive Requirements, Area Seaward of Established Dividing Line.

1. 303 and 403, Wood Stud Wall Framing. A figure to illustrate the requirements for notching and bored holes in wall studs has been added. The section on recessed front entryways has been revised to allow the construction of both recessed and flush entryways. Guidance has been provided for the construction of supports for multiple garage door openings. Typographical errors in the table for maximum allowable garage door header spans have been corrected. A subsection to address general sheathing requirements for wood structural panels has been added. A subsection for special sheathing conditions to provide guidance for sheathing around chimneys, sheathing around rafters that lap top plates and sheathing around bay windows has been added. Guidance has been provided for the use of narrow width shearwall segments and a new subsection which addresses minimum shearwall segment widths has been created. Clarification has been provided for fastener requirements for wood structural panels and gypsum wallboard used as shearwalls. Additional fastener options for attaching the gypsum wallboard to the wall framing have been provided. Clarification has been provided concerning how to obtain the appropriate length adjustment factor when using the sheathing length adjustment table. Guidance has been provided for the use of structural panel siding to include sheathing length adjustment factors and a figure which addresses fastener location has been added. The fastening requirements for shear transfer have been clarified and the presentation of the shear transfer section has been revised so that the requirements are easier to understand. The use of inch wood structural panels to resist a combination of both lateral loads and uplift loads will be permitted. The sheathing requirements for chimneys when the sheathing is not used for shearwall application have been revised.

2. 306 and 406, Roof Framing. Guidance has been provided for the attachment of framing members that are a part of the overhangs at gable endwalls. The existing section on construction requirements for overhangs at gable endwalls has been divided into two subsections to improve understandability and readability.

D. Appendices.

1. Shear Capacities for Sheathing Materials. The allowable shear capacities of gypsum wallboard have been updated and additional fastener spacing options for attachment of gypsum wallboard to wall framing have been provided. The allowable shear capacities of wood structural panels to include panel siding have been updated.

2. Figures. Illustrations are added to correspond to changes and clarifications for the code. The figure for gable endwall overhangs using outlookers (platform framing construction) to show the blocking between the outlookers and a single top plate at the top of the drop gable end have been revised. Copies of the proposed amendments to the Building Code for Windstorm Resistant Construction, are available from the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of amendments to §5.4008 in a public hearing under Docket Number 2457, scheduled for 10:00 o'clock, a.m. on October 4, 2000, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Alexis Dick, deputy commissioner for the inspections group, has determined that for each year of the first five years that the proposed amendments 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. Dick has also determined that there will be no adverse effect on local employment or the local economy.

Ms. Dick has also determined that for each year of the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of adopting this amended section will be the facilitation of compliance by coastal builders with the code by making changes that result in a code which is more user-friendly and easier for builders and inspectors to use. There is no anticipated adverse economic effect on large, small or micro-businesses who are required to comply with the proposed amendments because the amendments do not add any prescriptive requirements to the code that make the code more restrictive. Any small business or micro-business that is required to comply with the proposed amendments to §5.4008 will incur no costs in addition to those costs that would be incurred under the section as currently adopted.

To be considered, comments on the proposed amendments must be submitted no later than 5 p.m. on October 2, 2000, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be simultaneously submitted to Alexis Dick, Deputy Commissioner, Inspections Group, MC 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6C requires the Commissioner to appoint a Building Code Advisory Committee on Specifications and Maintenance to advise and make recommendations to the Commissioner on building specifications and maintenance in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and function of the Texas Department of Insurance only as authorized by statute.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4008. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998.

(a) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction. The Texas Department of Insurance

adopts by reference the Building Code for Windstorm Resistant Construction, effective September 1, 1998. Amendments to the Building Code for Windstorm Resistant Construction are adopted by reference to be effective December 1, 2000 [~~August 1, 2000~~].

(b) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County.

(1) To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in paragraphs (2)(A) and (2)(B) of this subsection and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction which is adopted by reference in subsection (a) of this section and any applicable amendments adopted by reference to be effective December 1, 2000 [~~August 1, 2000~~].

(2) (No change.)

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

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

Filed with the Office of the Secretary of State, on August 21, 2000.

TRD-200005873
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

SUBCHAPTER B. ECONOMICALLY DISTRESSED AREAS FACILITY ENGINEERING

31 TAC §§355.72, 355.77

The Texas Water Development Board (board) proposes amendments to 31 TAC §355.72 and new §355.77, Research and Planning Fund, concerning criteria for eligibility of facility planning projects for financial assistance and procurement of facility engineering services for projects funded through the Economically Distressed Areas Program (EDAP). The amendments to §355.72 are proposed in anticipation of a limited amount of funding for facility engineering becoming available as a result of cost savings on some projects, the termination of non-performing contracts, and the lapse of commitments. They are intended to clarify criteria that must be met and documentation which must be submitted before the board may consider an application for financial assistance for facility planning projects under the EDAP. The new §355.77 will provide guidance for applicants procuring facility engineering services for EDAP projects.

In 1999, the legislature added requirements to §15.407 of the Water Code for the board to adopt rules governing the procurement process for facility engineering services and for the executive administrator to review and approve the selection process used by an EDAP applicant to procure such services. The amendments are intended to address problem areas that have been identified in processing applications for EDAP assistance.

The amendments to §355.72 make it clear that certain fiscal information, including recent audits, rates and charges, and capital improvement plans, must be submitted, reviewed and evaluated by staff before the board will consider an application for facility engineering financial assistance under EDAP. The requirement for an executed contract for facility engineering services is reflective of the statutory amendments and recognizes the importance of these services to the quality of facility planning projects. Current rules require that an applicant must hold a Certificate of Convenience and Necessity (CCN) or have an application on file with TNRCC to obtain one for service to the proposed project area. The amendment to §355.72 would require that applicant to obtain any necessary CCN before consideration of an application by the board; however, an alternative is included that would allow the applicant to submit an executed interlocal agreement with the holder of the applicable CCN as evidence of the applicant's authority to provide services to the project area.

The proposed new §355.77 is intended to fulfill the legislative directive in SB 1421 for the board to adopt rules concerning the procurement of facility engineering services by recipients of EDAP funding. The new provisions are supplemental to the basic provisions of the Professional Services Procurement Act (Chapter 2254, TEX. GOV. CODE) and make it clear that the service provider must be selected pursuant to written procedures that assure that the selection process is open to all qualified providers and that each step of the selection process is documented. Also provided are basic requirements of: (i) an acceptable statement of qualifications (SOQ); (ii) recommended procedures for solicitation of SOQs, including publication and response schedules and minimum contents of a Request for Qualifications; (iii) criteria for evaluation of SOQs based on factors indicative of qualifications and experience; (iv) procedures for review of SOQs, including suggested makeup of an evaluation committee, a ranking process, and an interview procedure; and (v) contract negotiation process. The suggested procurement guidelines are formulated to ensure that the selection of a provider of facility engineering services has documentation which the Executive Administrator can review to verify that a qualified provider has been selected who can deliver needed engineering services at a reasonable cost within the constraints of the particular project.

The requirement for an applicant to submit an executed contract for facility engineering services that have been procured in compliance with state law and the procedural requirements set out in the new §355.77 with the application may be of particular significance. This and the other information to be required by the proposed amendment will allow staff to make a preliminary evaluation of the state of the applicant's fiscal affairs and of its potential capacity to manage and complete the proposed project. These amendments may also alleviate the need for conditional commitments, which can tie up funds that may never be accessed because the applicant cannot provide basic information necessary to evaluate an application, such as the recent audits.

Ms. Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period these changes are in effect there will no be fiscal implications on state and local government as a result of enforcement and administration of the sections. Although the timing or sequence in which information must be provided by an applicant is changed in some instances, the amendments are for purposes of clarification only and impose no new requirements on EDAP applicants.

Ms. Gulley has also determined that for the first five years the changes as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to assure the more timely receipt of accurate fiscal information from EDAP applicants submitting applications for facility planning assistance. The public will also realize benefits from implementation of the recommended process for open selection of the best qualified providers of facility engineering services. Ms. Gulley has determined there will be no increased economic cost to small businesses or individuals required to comply with the sections as proposed because the provisions apply only to political subdivisions applying for EDAP assistance.

Comments on the proposed amendments and new section will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Assistant General Counsel, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at 512/463-5580.

The amendments and new section are proposed under the authority of the Texas Water Code, §6.101.

The statutory provision affected by the proposed amendments and new section is Texas Water Code, Chapter 15, §15.407.

§355.72. Criteria for Eligibility.

(a) The board shall determine the counties that are affected as that term is defined in Texas Water Code, §16.341, based on and subject to the receipt of annual statistics found by the executive administrator to be sufficiently reliable to make such determination. Within 60 days of the receipt of the necessary statistics to determine the state average of per capita income and unemployment rate, the executive administrator shall submit for publication in the Texas Register a list of affected counties. Political subdivisions in the affected counties identified on this list shall be eligible to apply to the board for funds to pay for all or part of the cost of facility engineering in economically distressed areas, including plans and specifications, until the next list of eligible counties is published in the Texas Register.

(b) Political subdivisions must meet the appropriate requirements of this section before the board may consider an application for [~~provide~~] financial assistance for facility planning.

(1) A county within which the political subdivision applying for assistance is wholly or partially located must have adopted the model subdivision rules required by the Texas Water Code, §16.343. Copies of the model subdivision rules are available upon request from the Texas Water Development Board, Director, Border Project Management Division, P.O. Box 13231, Austin, Texas 78711.

(2) A municipality which applies for financial assistance or within which a political subdivision applying for assistance is wholly or partially located must have adopted the model subdivision rules required by the Texas Water Code, §16.343, if the economically distressed area to be served is partially or wholly located within the incorporated limits of the municipality.

(3) A political subdivision applying for facility planning assistance must have any required certificate of public convenience and necessity (CCN) that includes the project area and that is for the same type of service to be addressed in the proposed facility planning study; or, as an alternative, the applicant may submit an executed interlocal agreement with the holder of the applicable CCN which authorizes the applicant to provide the applicable services for the facility planning area[~~if the project area does not have a holder of a certificate of public convenience and necessity and one is required, the applicant must have applied for the certificate of public convenience and necessity before the applicant applies for facility plan assistance; or the application must be a joint application with the holder of the certificate of public convenience and necessity~~].

(4) A district or a nonprofit water supply corporation may apply for assistance from the board if the eligible county or municipality in which the economically distressed area is located do not intend to apply for financial assistance for the same project in the same area and the eligible county or municipality approves by resolution the district's or nonprofit water supply corporation's submittal of an application for financial assistance.

(5) A political subdivision shall have submitted for review:

(A) an annual audit for the most recent fiscal year of the political subdivision and financial statements for the three previous complete months;

(B) the most recent order or resolution establishing the rates and charges for the utility service for which the planning will be performed;

(C) the current capital improvement plan for the utility service for which the planning will be performed;

(D) an executed contract with the consulting engineer to prepare the facility plan and sufficient documentation to establish that the political subdivision complied with §355.77 of this title in procuring the services of the consulting engineer; and

(E) evidence that the county commissioners court has prepared a map showing the part of the county, outside the limits of the municipalities, in which the different types of on-site sewage disposal systems may be appropriately located and the parts of the county in which the different types of systems may not be appropriately located.

(c) Political subdivisions must meet the appropriate requirements of this section before the board may provide financial assistance for facility planning.

[~~(5)~~] If, after submission of a facility planning assistance application, the county average per capita income increases or the average unemployment rate decreases so that the county no longer meets the definition of affected county in §355.70 of this title (relating to Definitions), the political subdivision submitting the application will continue to be eligible for financial assistance provided the application is not substantially amended.

(d) [~~(6)~~] If the applicant is a local governmental entity as defined in the Health and Safety Code, Chapter 366, then before the board provides financial assistance for facility planning, the applicant must provide satisfactory evidence that it has taken and will take all actions necessary to receive and maintain a designation as an authorized agent of the commission as set forth in that chapter.

[~~(7) The applicant must present evidence that the county commissioners court has prepared a map showing the part of the county, outside the limits of the municipalities, in which the different types of on-site sewage disposal systems may be appropriately located and the parts of the county in which the different types of systems may not be appropriately located.~~]

§355.77. Procurement of Facility Planning Services.

(a) Professional engineering services necessary for preparing a facility plan for economically distressed areas shall be procured according to the Texas Government Code, Chapter 2254 (Professional Services Procurement Act), other applicable state and local laws, and the requirements of this section. The objective of this section is to establish basic parameters from which it can be determined that applicants receiving facility planning funds obtain the necessary professional engineering services through a process that is open to all interested qualified providers. Written procedures and documentation are recommended in order to insure receipt of services of qualified professionals at a responsible cost within the reasonable constraints of location and time for performance.

(b) Applicants shall procure the services of a consultant to perform the facility planning services pursuant to written procedures adopted by the applicant. The applicant shall maintain documentation of compliance with each step. The procedures and documentation submitted in the selection of the consultant will generally comply with the following requirements:

(1) contents of an acceptable statement of qualifications (SOQ);

(2) criteria for evaluating SOQs;

(3) solicitation of SOQs;

(4) review of SOQs according to criteria; and

(5) negotiation of a consulting services contract.

(c) The procedures and documentation establishing the applicant's compliance with the procedures shall be reviewed and approved by the executive administrator prior to consideration by the board of an application for financial assistance for such services; provided however, the executive administrator may approve variations from the requirements of this subsection based on a written finding that the applicant has substantially met the objectives of this section. The executive administrator shall review the procedures and documentation to ascertain compliance with these requirements.

(1) The applicant shall establish the contents of the statement of qualifications, or SOQ, for persons seeking to provide the facility planning services which will be reviewed by the applicant. The SOQ shall include at a minimum:

(A) the key personnel (including subconsultants or subcontracted personnel) who will be performing tasks within the scope of services identifying such personnel by name, professional license or registration number, areas of expertise, years of experience in that area, and the elements of the scope of services for which each such personnel will be responsible and describe specific project experience that would demonstrate expertise for that element;

(B) references establishing experience with government projects, facility planning phase engineering, demographic research, and residential surveys identified by specific project identification, location, project reference contact person and telephone number, and dates of engagement and completion of assignment;

(C) insurance coverage held by the respondent relative to the project identifying the carrier by name, address, telephone number, and type and extent of coverage;

(D) a signed and notarized statement that the respondent has no interest in the project that would conflict with the performance of the responsibilities of an engineer; and

(E) a list of any litigation, arbitration, administrative action related to past or current project performance, or the subject of any professional censure or licensure suspension involving any identified key personnel, and if so, a brief description of each and including a brief explanation if the respondent has ever been terminated from an assignment for nonperformance or unsatisfactory work.

(2) Criteria for evaluating the SOQ will include:

(A) educational and experiential background of key consultant personnel who will perform work on the project;

(B) record of success by the consultant and its key personnel, demonstrated by similar work previously performed;

(C) adequacy of staff and equipment to perform the work within the time needed;

(D) demonstrated ability of consultant to work effectively with other parties and public agencies related to the project;

(E) demonstrated continuing interest by the consultant in the success, efficiency, and effective performance of facilities and plans on which the consultant has previously worked;

(F) record of timely completion of previous projects; and

(G) demonstrated capacity to carry out the kind and extent of work required.

(3) The applicant shall insure a sufficient number of qualified respondents by publicizing a request for qualifications, or RFQ, once at least 21 days and once at least seven days before selection of a consultant, in a local newspaper within the geographical area in which the work will be performed and in a newspaper of the nearest major municipality. The RFQ shall contain at a minimum:

(A) a general description of the project planning area and the facility planning services sought specifically including a reference to the work required pursuant to §355.73 of this title;

(B) a statement that documentation of the minimum requirements for consideration which are to be submitted in the SOQ shall be available upon request;

(C) a statement that criteria for evaluating the qualifications is available from the applicant;

(D) a deadline by which respondents must submit SOQs to the requesting applicant; and

(E) the requesting applicant's contact person.

(4) The applicant shall select the most qualified respondent by order of highest qualification based on the published criteria.

(A) Evaluation of the SOQs shall be performed by a least three persons: at least one resident within the applicant's customer base who will be affected by the proposed project, at least one with a technical expertise in the field for which the services are sought, and at least one from the management of the applicant. Each member of the ranking team will independently rank each SOQ based on the published criteria. The scores assigned to each SOQ will be accumulated to achieve a single ranking for each SOQ.

(B) Based on the rankings, the applicant shall identify the three consultants with the highest rankings, or short list.

(C) Upon completion of ranking and preparation of the short list, if the applicant deems it necessary to interview firms in order to determine the most qualified respondent, the applicant shall issue an invitation to appear for an interview to each respondent on the approved short list.

(D) Upon the issuance of invitations to appear, the applicant shall form an interview panel to interview each respondent on

the short list for the purpose of ascertaining qualifications of each interviewee and ultimately selecting the most qualified respondent. At the conclusion of the interviews or upon completion of the short list if interviews are deemed unnecessary by the applicant, the applicant shall identify the most qualified respondent, the second most qualified, and the third most qualified.

(5) In order to complete the procurement process, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the highest ranking. The contract shall be acceptable in form and substance to the executive administrator. In the event that the applicant cannot conclude an acceptable contract with the highest ranked consultant, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the second highest ranking. In the event that the applicant cannot conclude an acceptable contract with the second highest ranked consultant, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the third highest ranking. If the applicant cannot conclude an acceptable contract with the third highest ranked consultant, the applicant shall be required to commence the process over from the start. *n

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 16, 2000.

TRD-200005824
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 18, 2000
For further information, please call: (512) 463-7981

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§375.2, 375.15, 375.17, and 375.221 concerning the funding program for the Clean Water State Revolving Fund (CWSRF). The amendments are proposed to update the rules, add new definitions and expand the scope of other definitions, clarify administrative procedures, and add a new element to the CWSRF rating system.

Section 375.2, relating to Definitions of Terms, is proposed for amendment to add nonpoint source or estuary management to the types of projects eligible for funding. Previously, the board has focused on those activities that met the Clean Water Act (Act), section 212 definition of "treatment works". The board now intends to broaden that focus to address the funding of all nonpoint source and estuary management activities, as authorized in sections 601, 319 and 320 of the Act. Therefore, the broader meaning of "project" is proposed to include sections 319 and 320 projects, and the broader term "project" is substituted for the term "treatment works" throughout the definition section.

The section is further proposed for amendment to expand the definition of "building" to include the implementation of a project. The current definition fits the erection, acquisition, alteration, remodeling, improvement or extension of a treatment works facility, but the additional word "implementation" is a better description of activities funded as nonpoint source or estuary management projects. Additionally, the definition of "construction" is proposed for amendment to eliminate the redundant listing of activities already included in the definition of "building". Finally, the definition of "estuary management project" is proposed for amendment to allow funding of the development of an estuary management plan, as authorized in section 601 of the Act.

Section 375.15, relating to Criteria and Methods for Distribution of Funds, is proposed for amendment for consistency, to include the two new types of projects (nonpoint source or estuary management) into the eight categories of funding. The section is also amended to extend a commitment deadline in limited circumstances where an applicant has timely submitted an application, as defined in the chapter rules, but additional information is deemed to be necessary for consideration of a proposed project. The change will allow the Executive Administrator to request additional information from an applicant without causing the applicant to lose its place on the funding list.

Section 375.17, relating to Intended Use Plan, is proposed for amendment to describe acceptable changes that may be made to a project after it has been listed on an adopted Intended Use Plan. These changes include the applicant, itself; the number of participants in a consolidated project; and the solution to an identified water supply problem. The amendments allow the board to focus on providing funding for solutions to the water supply needs of a particular area, rather than focusing on a particular applicant or project.

Section 375.221, relating to Pre-Design Funding Option, is proposed for amendment to delete the requirement that loans made under this option must be closed within six months of the board commitment. The purpose of the six-month time limitation was to encourage timely closing so as to move the federal dollars into immediate projects. Experience has shown that six months is too short a time and that many of the commitments must return to the board for time extensions. The remainder of the subsections are renumbered accordingly.

Ms. Pam Gulley, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be more consistent and efficient administration of the board's financial assistance programs as a result of the clarifications and changes incorporated in the proposed amendments. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail L. Allan, Director, Administration and Northern Legal Services, Texas Water Development, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to gail.allan@twdb.state.tx.us or by fax @ 512/463-5580.

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.2

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water

Development with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J and Chapter 17, Subchapters C, E and F.

§375.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by the chapter or subchapter as appropriate.

(1)-(9) (No change)

(10) Building - The erection, acquisition, alteration, remodeling, improvement, [~~or~~] extension, or implementation of projects [~~of treatment works~~].

(11)-(16) (No change)

(17) Construction - Any one or more of the following:

(A) preliminary planning to determine the feasibility of a project[~~treatment works~~];

(B) engineering, architectural, environmental, legal, title, fiscal, or economic studies;

(C) the expense of any condemnation or other legal proceeding;

(D) surveys, designs, plans, working drawings, specifications, procedures; and

(E) the building of a project [~~erection, building, acquisition, alteration, remodeling, improvement or extension of treatment works~~] or the inspection or supervision of any of the foregoing items.

(18)-(21) (No change)

(22) CWSRF program account - The program account is an account in the CWSRF created pursuant to a resolution of the board in issuing CWSRF bonds and is used, pursuant to such bond resolution(s), for the purpose of providing financial assistance to political subdivisions for construction of projects [~~treatment works~~] and, if needed, to pay rebate amounts to the federal government.

(23)-(27) (No change)

(28) Engineering feasibility data - Those necessary plans and studies which directly relate to projects [~~treatment works~~] needed to comply with enforceable requirements of the Act and state statutes, and which consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area and will demonstrate the selected alternative is cost-effective.

(29)-(37) (No change)

(38) Estuary management project - A project to develop or implement[~~pursuant to~~] an estuary management plan.

(39)-(59) (No change)

(60) Project - The scope of work describing a construction endeavor normally within a single wastewater treatment or collection service area which can be separately rated in accordance with §375.16 of this title (relating to Rating Process), or a nonpoint source project or estuary management project.

(61)-(72) (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 16, 2000.

TRD-200005821
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 18, 2000
For further information, please call: (512) 463-7981

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §§375.15, 375.17

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J and Chapter 17, Subchapters C, E and F.

§375.15 Criteria and Methods for Distribution of Funds.

(a) After the executive administrator determines the amount of funds available for projects for a fiscal year, the funds will be applied to the list of projects designated to receive funding in the intended use plan. The list will be divided into eight categories as follows:

(1) category A, which shall consist of treatment works projects proposed by applicants with existing populations of 3,000 or fewer;

(2) category B, which shall consist of treatment works projects proposed by applicants with existing populations from 3,001 to 10,000;

(3) category C, which shall consist of treatment works projects proposed by applicants with existing populations from 10,001 to 25,000;

(4) category D, which shall consist of treatment works projects proposed by applicants with existing populations from 25,001 to 100,000;

(5) category E, which shall consist of treatment works projects proposed by applicants with existing populations from 100,001 to 500,000;

(6) category F, which shall consist of treatment works projects proposed by applicants with existing populations of 500,001 or greater;

(7) category G, which shall consist of treatment works projects proposed by applicants for rural hardship communities; and

(8) category H, which shall consist of nonpoint source projects or estuary management projects.

(b) Projects for categories A-G shall be listed in priority ranking order with funds required and totaled by category. Projects in category H shall be listed in alphabetical order according to the name of the applicant with funds required and totaled for the category. Project costs

will be based on cost estimates, acceptable to the executive administrator, contained in the intended use plan solicitation described in §375.17 of this title (relating to Intended Use Plan) used to establish the project list. Funds required by all projects in each category will then be totaled. Except for category G, a percentage of the total funds required by each category shall be computed based upon the ratio of funds required by each category to the funds required by all categories. The portion of the available funds shall be assigned to the categories based on this computed percentage, provided that no category will be assigned less than 7.0% of the total funds available unless the total needs of the category are less than 7.0%. The funds assigned to category G shall be equal to the amount of federal grants available for the fiscal year plus an equal amount of CWSRF loan funds.

(c) After population class percentages have been assigned and available funds distributed among the categories, a funding line shall be drawn within each category to indicate the amount of funds available to each category.

(d) After the funding line is drawn, if funds are available pursuant to Subchapter B of this title (relating to Provisions Pertaining to Use of Capitalization Grant Funds), the executive administrator shall notify in writing all applicants above the funding line of the availability of such funds for the fiscal year and shall invite the submittal of applications. Such funds shall be distributed in accordance with the provisions of Subchapter B.

(e) After the executive administrator determines that the funds made available pursuant to Subchapter B are sufficiently utilized to satisfy the federal requirements, the executive administrator shall notify in writing all remaining applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice of availability of funds or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance, and will be allowed two additional months to receive a loan commitment.

(f) If, at any time during the above-described period an applicant above the funding line submits written notification that it does not intend to submit an application, or if additional funds become available for assistance, the funding line within each category may be moved downward in priority order to accommodate additional projects which would utilize the funds that would otherwise not be committed. The executive administrator will notify such additional applicants in writing and will invite the submittal of applications. Applicants receiving such notice will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance and will be allowed two additional months to receive a commitment.

(g) After the six-month period of availability of funds if all available funds are not committed, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the ranked list within each category, where they will be placed in priority ranking order. The funding line will be redrawn within each category to utilize the funds remaining within the category.

(h) After the funding line is re-drawn, the executive administrator shall notify in writing all applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, submit applications for assistance and will be allowed two additional months to receive a commitment.

(i) If funds are available from categories A through H after the executive administrator is able to make a determination that all applicants in each category have had the opportunity to be funded, the remaining funds will be made available to the other categories. The remaining funds will be pooled with any funds left over from the other categories and made available to category A. If no applicants in category A are able to utilize the funds, then the funds will be made available to category B. If no applicants in category B are able to utilize the funds, then the funds will be made available to category C. If no applicants in category C are able to utilize the funds, then the funds will be made available to category D. If no applicants in category D are able to utilize the funds, then the funds will be made available to category E. If no applicants in category E are able to utilize the funds, then the funds will be made available to category F.

(j) Loan assistance will not exceed the cost estimate in the intended use plan without board approval. In the event the cost of a project exceeds the funds available, the applicant may seek additional funds from other appropriate board programs.

(k) Applications for assistance for category H, nonpoint source or estuary projects, will be funded as follows.

(1) Applications in category H will be funded on a first-come, first-served basis until the available funds have been exhausted.

(2) If, on the first business day of any given month in which funds are available, the total amount of funds required to fund all applications which are complete and ready for scheduling for board action exceeds the amount of funds available, the applications will be considered in the order of the submittal date of the complete application.

(3) If, during any given month for which funds are available, the amount of funds required to fund a particular application are insufficient to completely fund the application, the applicant may seek additional funds from other appropriate board programs.

(l) If, there is a shortage of funds, no single applicant may receive more than 30% of the total funds available for projects for a fiscal year.

(m) Notwithstanding the provisions of subsections (e), (f), and (h) of this section, the executive administrator may request additional information regarding any portion of the application for assistance, after the application has been submitted, without affecting the priority rating status of the application.

§375.17. Intended Use Plan.

(a) Each fiscal year the board shall prepare an intended use plan to meet the requirements of the Act, §606(c), and to assist the board in its financial planning. The intended use plan will identify projects anticipated to receive assistance from that year's available funds. The list of projects by priority ranking included in the intended use plan may also serve as the project priority list required by the Act.

(b) The process for listing projects in the intended use plan will be as follows.

(1) Each year the executive administrator will provide written notice and solicit project information from entities desiring to receive funding commitments during the next fiscal year on the basis of that year's intended use plan. The notice will include forms to be used to submit information needed to rate the principal project and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required project information will include:

(A) information needed to rate the project;

(B) a description of the proposed facilities;

(C) the status of any required permit application, including projected effluent limitations;

(D) the estimated total project cost;

(E) an estimated schedule for planning, design and construction of the proposed project;

(F) a statement as to whether the applicant is under enforcement by EPA or the commission; and

(G) such other information as may be requested by the executive administrator.

(2) The required information must be submitted not later than the deadline specified in the written notice to be included in the draft intended use plan. Rating information submitted after the deadline will not be accepted. Incomplete rating information forms may prevent projects from being rated for inclusion in the intended use plan.

(c) Subsequent to adoption of an intended use plan, the nature of a proposed project included in the intended use plan may change without requiring a re-ranking in the following circumstances:

(1) the applicant for a proposed project may change;

(2) an alternative may be proposed which addresses the specific system condition for which priority points were assigned; or,

(3) the total cost of a proposed project may decrease from the amount listed in the adopted intended use plan.

(d) If any changes are proposed to the nature of the improvements of a proposed project which would result in a change to the rating score as determined by §375.16 of this title (relating to Rating Process), the project must be re-ranked in the intended use plan. In this case the availability of funds will determined based on the revised rating score.

(e) [~~(3)~~] After a period of public review and comment, the intended use plan will be presented for adoption to the board at a regularly scheduled meeting.

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 16, 2000.

TRD-200005822
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 18, 2000
For further information, please call: (512) 463-7981

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SUBCHAPTER B. PROVISIONS PERTAINING TO USE OF CAPITALIZATION GRANT FUNDS
DIVISION 3. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §375.221

The amendments are proposed under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15, Subchapter J and Chapter 17, Subchapters C, E and F.

§375.221. Pre-Design Funding Option.

(a) This loan application option will provide an applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for planning, design or building costs associated with a project. Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and building funds will be escrowed and released in the sequence described in this section. After planning and environmental review, the board may require the applicant to make changes in order to receive the board's approval and proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity.

(b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(c) Applications for pre-design funding must include the following information:

(1) for loans including building cost, an engineering plan of study which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected flows; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services;

(3) evidence that an approved water conservation plan as required under §375.37 of this title (relating to Required Water Conservation Plan) will be adopted prior to the release of loan funds or the applicant's election to submit the water conservation plan under §375.37(b) of this title;

(4) all information required in §§375.32, 375.33, and 375.34 of this title (relating to Required General Information, Required Legal Information, and Required Fiscal Information); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

[~~(d) Recipients of funds for pre-design funding under this subchapter must close their loans under §375.71 of this title (relating to Loan Closing) within six months of the date the board commits funds, unless extended by the board.~~]

(d) [~~(e)~~] After board commitment and completion of all closing and release prerequisites as specified in §375.71 of this title (relating to Loan Closing) and §375.72 of this title (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan if still outstanding under §375.37(b) of this title;

(2) for design costs, after receipt of executed contracts for the design phase and upon approval of the engineering feasibility data

as specified in §375.36 of this title (relating to the Engineering Feasibility Data) and compliance with §375.214 of this title (relating to Required Environmental Review and Determination) and after board approval under subsection (e) of this section; and

(3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(e) [~~(f)~~] Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (c)(1) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns to allow the executive administrator to make a recommendation to the board on pre-design funding. Prior to release of funds for design, these projects must have the board's approval based upon an environmental review conducted during planning under the standards of §375.214 of this title as applicable.

(f) [~~(g)~~] Prior to the board's approval of release of funds for design, the executive administrator shall summarize the project's environmental review and shall inform the board of any environmentally related special mitigative or precautionary measures recommended for the project. The board may elect to affirm or alter the conditions of the original commitment to the applicant or withdraw the commitment 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 16, 2000.

TRD-200005823
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 18, 2000
For further information, please call:

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

37 TAC §429.3

The Texas Commission on Fire Protection proposes an amendment to §429.3, concerning Minimum Standards for Basic Fire Inspector Certification. The change to §429.3 deletes the word "resident" in reference to National Fire Academy courses used to qualify for the basic fire inspector certification examination. The deletion of the reference to "resident" clarifies that courses delivered off campus may be used to qualify for the examination. In addition, the section as amended allows an individual to satisfy the college route requirements with either Hazardous Materials I or II.

Mr. Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, has determined that for the first five year period the amended section is in effect there will be no fiscal implications for state and local governments required to comply with the section as amended.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that the recognition of NFA courses delivered off campus provides individuals seeking fire inspector certification with greater flexibility and more sources for inspector certification training and encourages pursuit of such training.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

The commission has determined that the proposed amendments relating to fire inspector certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendment.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

(a) (No change)

(b) In order to be certified by the commission as a Basic Fire Inspector an individual must complete a commission approved fire inspection training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one of the following:

(1)-(2) (No change)

(3) successful completion of the following college courses: Fundamentals of Fire Protection 3 semester hours; Fire Protection Systems 3 semester hours; Fire Prevention 3 semester hours; Building Code 3 semester hours; Building Construction 3 semester hours; Hazardous Materials [~~I~~] 3 semester hours; Fundamentals of Speech 3 semester hours. Total semester hours 21* *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials; or

(4) successful completion of a minimum of 226 hours of instruction in a National Fire Academy [~~resident~~] program for fire inspection. The [~~resident~~] program must include the basic course, Fire Inspection Principles, and any combination of the following courses or its predecessor:

(A) Fire Prevention Specialist II; or

(B) Plans Review for Inspectors; or

(C) Code Management: A Systems Approach; or

(D) Management of Fire Prevention Programs; or

(E) Strategic Analysis of Fire Prevention Programs

(c) National Fire Academy [~~resident~~] courses of equal or greater class hours that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

(d) (No change)

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

Filed with the Office of the Secretary of State, on August 18, 2000.

TRD-200005857
T. R. Thompson
General Counsel
Texas Commission of Fire Protection
Earliest possible date of adoption: October 01, 2000
For further information, please call: (512) 239-4913

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR - PUMPER

37 TAC §433.3, §433.7

The Texas Commission on Fire Protection proposes an amendment to §433.3, concerning Minimum Standards for Driver/Operator - Pumper and new §433.7 concerning International Fire Service Accreditation Congress (IFSAC) Certification for Driver/Operator - Pumper. The change to §433.3 allows a person to qualify for the examination for Driver/Operator - Pumper after documentation of Fire Fighter I training. The deletion of the reference to subsection (b)(1) allows persons from other jurisdictions to qualify for the examination without otherwise holding a commission certification in a suppression discipline such as structure, marine, or aircraft fire fighting. This would qualify the person from another jurisdiction for an IFSAC seal but not for certification in Texas as a Driver/Operator - Pumper. The new §433.7 provides for IFSAC certification of persons holding a current commission Driver/Operator - Pumper certification, or a person from another jurisdiction who has met the training and testing requirements of §433.3 concerning Minimum Standards for Driver/Operator - Pumper Certification.

Mr. Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, has determined that for the first five year period the proposed amendment and new section are in effect there will be no fiscal implications for state and local governments required to comply with the new and amended sections.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment and new section are in effect the public benefit anticipated as a result of enforcing the amended section will be that compliance with national professional standards established by the National Fire Protection Association will be encouraged. Allowing IFSAC certification for both in-state and out-of-state applicants provides consistency in training and work force mobility for persons holding such certification whether the applicant is in- state or out-of-state.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendment and new section. Individuals who seek IFSAC certification on a voluntary basis will incur an additional $5.00 for the IFSAC seal.

The commission has determined that the proposed amendment and new section relating to Minimum Standards for Driver/Operator - Pumper will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendment and new section are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendment and new section.

§433.3. Minimum Standards for Driver/Operator - Pumper Certification.

(a)-(e) (No change)

(f) No individual will be permitted to take the commission examination for driver/operator - pumper unless the individual documents, as a minimum, completion of NFPA 1001 Fire Fighter I training [~~meets the requirements of subsection (b) (1) of this section~~].

§433.7. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Driver/Operator - Pumper Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Driver/Operator - Pumper by making application to the commission for the IFSAC seal and paying the applicable fees.

(b) Individuals completing a commission approved driver/operator - pumper program; documenting IFSAC accreditation for Fire Fighter I, as a minimum; and passing the applicable state examination may be granted IFSAC Certification as a Driver/Operator - Pumper by making application to the commission for the IFSAC seal and paying applicable fees.

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 18, 2000.

TRD-200005858
T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 239-4913

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

37 TAC §439.5

The Texas Commission on Fire Protection proposes an amendment to §439.5, concerning examination procedures for certification. The change to §439.5 deletes language that specified the number of active and pilot questions and the time allowed for the basic fire suppression certification examination. The change allows the commission staff the discretion to establish both the number of questions and the time allowed.

Mr. Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, has determined that for the first five year period the amended section is in effect there will be no fiscal implications for state and local governments required to comply with the section as amended.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that commission will have, consistent with examinations in other disciplines, more flexibility in administering the basic fire suppression examination and the ability to include pilot questions for validation purposes.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

The commission has determined that the proposed amendments relating to examination procedures will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for basic certification tests for fire protection personnel.

Texas Government Code, §419.032 is affected by the proposed amendment.

§439.5. Procedures.

(a)-(s) (No change)

(t) [~~The Basic Fire Suppression examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three (3) hours.~~]

[~~(1) Basic Fire Suppression Fire Fighter I examination includes 100 active questions with an option of adding up to ten pilot questions. The time allowed for the completion of the written examination will not exceed two hours.~~]

[~~(2) The Basic Fire Suppression Fire Fighter II examination includes 50 active questions with an option of adding up to ten pilot questions. The time allowed for the completion of the written examination will not exceed one hour.~~]

[~~(3) The Basic Fire Suppression Fire Fighter I and II combined examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.~~]

[~~(u)~~] An individual who has documented completion of commission approved Fire Fighter II training will be allowed to take the Basic Fire Suppression Fire Fighter II examination, if it has been less than four years since the individual has passed the commission's Basic Fire Suppression Fire Fighter I written and performance evaluation.

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 18, 2000.

TRD-200005859
T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 439-4913

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection proposes new Chapter 451, concerning Fire Officer certification, including Subchapter A, Minimum Standards for Fire Officer I, §§451.1, 451.3, 451.5, and 451.7; and Subchapter B, Minimum Standards for Fire Officer II, §§451.201, 451.203, 451.205, and 451.207. The new sections establish new requirements for a voluntary certification for Fire Officers. The standards allow applicants to complete a commission approved curriculum or, alternatively, a college course route to qualify for the certification examinations. Out-of-state or military training may also be submitted for review as to equivalency. The new standard establishes examination requirements and allows individuals to obtain a seal for International Fire Service Accreditation Congress (IFSAC) certification. Finally, the new sections allow individuals with previous training to challenge the certification examination during a one year grace period. The new sections have an anticipated effective date of January 1, 2001.

Mr. Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, has determined that for the first five year period the new sections are in

effect there will be fiscal implications for state and local governments as a result of enforcing the new sections. The commission will incur additional costs for staff time and travel expenses of approximately $40.00 per person who seeks examination and certification under the new sections. This increased costs will be offset by a corresponding increase in revenue generated from fees for examinations and certification. Local governments that choose to pay the examination and certification costs for this voluntary certification will incur additional costs of $40.00 per person for employees seeking certification as Fire Officer I or II, including $15.00 for examination fees, $20.00 for certification fees, and $5.00 for IFSAC seals.

Mr. Soteriou has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that standardized training and certification requirements for fire officer certification will ensure high standards for training specific to the management of fire department operations. Local jurisdictions will be able to measure potential candidates for fire management positions against state and national standards.

There are no additional costs of compliance for small or large businesses required to comply with the new sections. Individuals whose employers do not pay for examination and certification fees will incur the same cost as local governments to comply with the new sections for voluntary certification: $40.00 per person.

The commission has determined that the proposed new sections relating to fire officer certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §§451.1, 451.3, 451.5, 451.7

The new sections are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed new sections.

§451.1. Fire Officer I Certification.

(a) The effective date of this section shall be January 1, 2001.

(b) A Fire Officer I is defined as an individual who may supervise fire personnel during emergency and non-emergency work periods; serve in a public relations capacity with members of the community; implement departmental policies and procedures at the unit level; secure fire scenes and perform fire investigations to determine preliminary cause; conduct pre-incident planning; supervise emergency operations; or ensure a safe working environment for all personnel.

(c) Within one year of the effective date of this section, an individual may apply for certification as a Fire Officer I and is eligible to take the commission examination for Fire Officer I, upon documentation to the Commission that the individual has completed the Fire Officer I training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 2 (1997 edition, or earlier). Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.

§451.3. Minimum Standards for Fire Officer I Certification.

(a) The effective date of this section shall be January 1, 2001. Training programs that are intended to satisfy the requirements of this section, that are started on or after the effective date of this section, must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified as a Fire Officer I an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) complete a commission approved Fire Officer I program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer I program must consist of one of the following:

(A) completion of a commission approved Fire Officer I Curriculum as specified in Chapter 9 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual);

(B) completion of an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer I Curriculum;

(C) completion of a military training program that has been submitted to the commission for evaluation and found to be equivalent or exceed the commission approved Fire Officer I Curriculum; or

(D) successful completion of 15 college semester hours consisting of the following courses or their equivalent:

(i) Fire Prevention Codes and Inspections, 3 semester hours;

(ii) Fire and Arson Investigation I or II, 3 semester hours;

(iii) Fire Administration I, 3 semester hours;

(iv) Firefighting Strategies and Tactics I or II, 3 semester hours; and

(v) Company Fire Officer, 3 semester hours.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer I) of the "Commission Certification Curriculum Manual" are met.

(d) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

(e) The commission approved Fire Officer I curriculum must be conducted by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities).

(f) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Fighter II and Fire Officer I shall be eligible to take the commission written examination for Fire Officer I.

(g) No individual will be permitted to take the commission examination for Fire Officer I certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the "Commission Certification Curriculum Manual".

§451.5. Examination Requirements.

(a) The written examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer I certification.

(b) Performance skills must meet the requirements in §439.11 of this title (relating to Performance Skill Evaluation) with the following exceptions:

(1) All performance skills listed in the curriculum must be tested for competency during the course.

(2) The number of opportunities to successfully complete particular performance skill objectives evaluated during a Fire Officer I School is at the discretion of the training officer or coordinator. Retests must be conducted prior to the completion of the course.

(3) All skills must be demonstrated before a commission approved field examiner.

§451.7. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Fire Officer I certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Fire Officer I by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals may be granted IFSAC Certification as a Fire Officer I by:

(1) completing a commission approved Fire Officer I program;

(2) passing the applicable state examination;

(3) documenting IFSAC accreditation for Fire Fighter II; and

(4) making application to the commission for the IFSAC seal and paying applicable fees.

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 18, 2000.

TRD-200005860

T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 239-4913

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §§451.201, 451.203, 451.205, 451.207

The new sections are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed new sections.

§451.201. Fire Officer II Certification.

(a) The effective date of this section shall be January 1, 2001.

(b) A Fire Officer II is defined as an individual who may evaluate the performance of personnel; deliver public education programs; prepare budget requests, news releases, and policy changes; conduct inspections and investigations; supervise multi- unit emergency operations; and identify unsafe work environments and take preventive action; or review injury, accident, and health exposure reports. Individuals who perform inspections must comply with Chapter 429 of this title (relating to Minimum Standards for Fire Inspectors). Individuals who perform investigations must comply with Chapter 431 of this title (relating to Fire Investigation).

(c) Within one year of the effective date of this section, an individual may apply for certification as a Fire Officer II and is eligible to take the commission examination for Fire Officer II, upon documentation to the Commission that the individual has completed the Fire Officer II training meeting the minimum requirements of the National Fire Protection Association Standard 1021, Chapter 3 (1997 edition, or earlier), and holds, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission. Individuals who qualify with training under the college course option are not subject to the one year limit of this subsection.

§451.203. Minimum Standards for Fire Officer II Certification.

(a) The effective date of this section shall be January 1, 2001. Training programs that are intended to satisfy the requirements of this section, that are started on or after the effective date of this section, must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified as a Fire Officer II an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer I certification through the commission;

(3) hold, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission; and

(4) complete a commission approved Fire Officer II program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer II program must consist of one of the following:

(A) completion of a commission approved Fire Officer II Curriculum as specified in Chapter 9 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual);

(B) completion of an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer II Curriculum;

(C) completion of a military training program that has been submitted to the commission for evaluation and found to be equivalent or exceed the commission approved Fire Officer II Curriculum; or

(D) successful completion of 18 college semester hours consisting of the following courses or their equivalent:

(i) Fire Prevention Codes and Inspections, 3 semester hours;

(ii) Fire and Arson Investigation I or II, 3 semester hours;

(iii) Fire Administration I, 3 semester hours;

(iv) Fire Administration II, 3 semester hours;

(v) Firefighting Strategies and Tactics I or II, 3 semester hours; and

(vi) Company Fire Officer, 3 semester hours.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer II) of the "Commission Certification Curriculum Manual" are met.

(d) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

(e) The commission approved Fire Officer II curriculum must be conducted by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities).

(f) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Fighter II, Instructor I, and Fire Officer II shall be eligible to take the commission written examination for Fire Officer II.

(g) No individual will be permitted to take the commission examination for Fire Officer II certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the "Commission Certification Curriculum Manual", and holds, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.

§451.205. Examination Requirements.

(a) The written examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer II certification.

(b) Performance skills must meet the requirements in §439.11 of this title (relating to Performance Skill Evaluation) with the following exceptions:

(1) All performance skills listed in the curriculum must be tested for competency during the course.

(2) The number of opportunities to successfully complete particular performance skill objectives evaluated during a Fire Officer II School is at the discretion of the training officer or coordinator. Retests must be conducted prior to the completion of the course.

(3) All skills must be demonstrated before a commission approved field examiner.

§451.207. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Fire Officer II certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Fire Officer II by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals may be granted IFSAC Certification as a Fire Officer II by:

(1) completing a commission approved Fire Officer II program;

(2) passing the applicable state examination;

(3) documenting IFSAC accreditation for Fire Fighter II and Fire Officer I;

(4) holding, as a minimum, intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor certification through the commission, or documenting IFSAC accreditation as an Instructor I; and

(5) making application to the commission for the IFSAC seal and paying applicable fees.

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 18, 2000.

TRD-200005861
T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 239-4913

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CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.1, §453.3

The Texas Commission on Fire Protection proposes amendments to §453.1 and §453.3, concerning Hazardous Material Technician Certification. The change to §453.1 deletes obsolete language pertaining to a grace period for persons with previous training to challenge the test for certification. The change to §453.3 allows individuals from another jurisdiction who meet the training requirements for hazardous material technician certification to qualify for the examination, although they are not certified in Texas in a suppression discipline such as structure, marine, or aircraft fire fighting. This would qualify the person from another jurisdiction for an International Fire Service Accreditation Congress (IFSAC) seal but not for certification in Texas as a hazardous material technician. The amendment also clarifies the requirement for documentation of training in hazardous material first responder awareness and operations (mandatory 40 hours total in the Basic Fire Suppression Curriculum) in addition to the 80 hour hazardous material technician certification curriculum to qualify for the certification examination.

Mr. Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state and local governments required to comply with the sections as amended.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that applicants have a clearer understanding of the training requirements for hazardous material technician certification and allowing IFSAC certification for both in-state and out-of-state applicants provides consistency in training and work force mobility for persons holding such certification whether the applicant is in-state or out-of-state.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

The commission has determined that the proposed amendments relating to hazardous material technician certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendments.

§453.1. Hazardous Materials Technician Certification

(a) [~~The effective date of this section shall be January 1, 1999.~~]

[~~(b)~~] A hazardous materials technician is defined as an individual who performs emergency response to an occurrence which results in, or is likely to result in, an uncontrolled release of a hazardous substance where there is a potential safety or health hazard (i.e., fire, explosion, or chemical exposure). A hazardous materials technician responds to such occurrences and is expected to perform work to handle and control (stop, confine, or extinguish) actual or potential leaks or spills. The hazardous materials technician assumes a more aggressive role than a first responder at the operations level in that the hazardous materials technician will approach the point of release. The hazardous materials technician is expected to use specialized chemical protective clothing (CPC) and specialized control equipment.

[~~(c) Within one (1) year of the effective date of this section, an individual may apply for certification as a Hazardous Materials Technician and is eligible to take the commission examination for hazardous materials technician, upon documentation to the Commission that the individual has completed the Hazardous Materials Technician training meeting the minimum requirements of the Occupational Safety and Health Administration 29 CFR 1910.120(q)(6)(iii) or National Fire Protection Association Standard 472 (1997 edition, or earlier).~~]

(b) [~~(d)~~] All individuals holding a hazardous materials technician certification shall be required to comply with the continuing education requirements in §441.17 of this title (relating to Continuing Education Requirements for Hazardous Materials Technician).

§453.3. Minimum Standards for Hazardous Materials Technician Certification.

(a) [~~The effective date of this section shall be January 1, 1999.~~] Training programs that are intended to satisfy the requirements of this section[~~, that are started on or after the effective date of this section,~~] must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b)-(e) (No change)

(f) No individual will be permitted to take the commission examination for hazardous materials technician unless the individual[~~:~~]

[~~(1) meets the requirements of §453.1(b) of this title (relating to Hazardous Materials Technician Certification); and~~]

[~~(2)~~] documents completion of the first responder awareness and operations level training as required by Chapter 1, Basic Fire Suppression, of the "Commission Certification Curriculum Manual" [~~or provides an affidavit from the individual's fire chief that the individual meets the competencies required by Chapter 1 of the "Commission Certification Curriculum Manual"~~].

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 18, 2000.

TRD-200005862
T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 239-4913

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Department of Human Services (DHS) proposes amendments to §92.4, concerning types of assisted living facilities; §92.20, concerning license fees; §92.41, concerning standards for Type A and Type B assisted living facilities; and proposes new §92.71, concerning introduction and application: Type E facilities; and §92.72, concerning general requirements: Type-E facilities, in its Licensing Standards for Assisted Living Facilities chapter. The purpose of the amendments and new sections is to establish a separate assisted living licensure category for facilities serving persons who need assistance only with medications and general supervision as required by Health and Safety Code §247.030. The proposed rules provide a different category of Life Safety Code requirements, more appropriate for a population which is fully capable of evacuation unassisted and is not medically frail. The proposal also adds staff training requirements that address this population's unique needs in the areas of medication and behavior.

Eric M. Bost, commissioner, 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 enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to enable more facilities to seek licensure, which will enable DHS to provide more oversight and protection for their residents. The proposed rules relax the current Life Safety Code requirements, which were designed to protect the frail elderly, particularly in the case of a fire. Many facilities currently serving persons needing assistance only with medications are unlicensed because meeting the current structural requirements can be quite costly. There will be no effect on large, small, or micro businesses because the proposed rules are less stringent than the current rules. Complying with them will be less costly than complying with the current rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-214, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.4

The amendment is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license assisted living facilities.

The amendment implements the Health and Safety Code, Chapter 247.001-247.066.

§92.4. Types of Assisted Living Facilities.

Types of assisted living facilities are as follows.

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

(4) Type E.

(A) Limitation on types of residents. In a Type E facility, a resident:

(i) must be physically and mentally capable of evacuating the facility unassisted. This may include persons who are mobile, although nonambulatory, such as persons in wheelchairs or electric carts having the capacity to transfer and evacuate themselves in an emergency;

(ii) must not require routine attendance during nighttime sleeping hours; and

(iii) must be capable of following directions under emergency conditions.

(B) Limitation on types of services. Notwithstanding any other provision in this chapter, Type E facilities may only provide medication supervision, in accordance with Health and Safety Code §247.002(5)(B), and general supervision of residents' welfare, in accordance with Health and Safety Code §247.002(5)(C), and may not provide substantial assistance with the activities of daily living, as described by Health and Safety Code §247.002(5)(A) - assistance with meals, dressing, movement, bathing, or other personal needs 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.

Filed with the Office of the Secretary of State, on August 21, 2000.

TRD-200005881
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.20

The amendment is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license assisted living facilities.

The amendment implements the Health and Safety Code, Chapter 247.001-247.066.

§92.20. License Fees.

(a) Basic fees.

(1) Type A, [~~and~~] Type B, and Type E. The license fee is $100 plus $5 for each bed for which a license is sought, with a maximum of $750. The fee must be paid with each initial application and annually with each application for renewal of the license.

(2)-(4) (No change.)

(b)-(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 21, 2000.

TRD-200005880
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §92.41

The amendment is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license assisted living facilities.

The amendment implements the Health and Safety Code, Chapter 247.001 - 247.066.

§92.41. Standards for Type A, [~~and~~] Type B, and Type E Assisted Living Facilities.

(a) Employees.

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

(3) Staffing.

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

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A and Type E facilities [~~facility~~]: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) (No change.)

(4) Staff training. The facility must document that staff members are competent to provide personal care prior to assuming responsibilities and have received the following training.

(A) (No change.)

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

(i) in Type A and B facilities, providing assistance with the activities of daily living; in Type E facilities, medications and recognizing, reporting, and recording side effects;

(ii)-(iv) (No change.)

(v) managing disruptive [~~dysfunctional~~] behavior.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Subject matter must address the unique needs of the facility. Suggested topics include:

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

(iii) communication techniques for working with residents [~~persons~~] with hearing, visual, or cognitive impairment;

(iv) (No change.)

(v) common physical, psychological, social, and emotional conditions [~~changes that may accompany the aging process~~] and how these conditions [~~changes~~] affect residents' care;

(vi) essential facts about common physical and mental disorders [~~that may increase with aging~~], for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(vii) cardiopulmonary resuscitation; [~~and~~]

(viii) common medications and side effects, including psychotropic medications, when appropriate;[~~.~~]

(ix) understanding mental illness;

(x) conflict resolution and de-escalation techniques; and

(xi) information regarding community resources.

(D) (No change.)

(b)-(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 21, 2000.

TRD-200005879
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §92.71, §92.72

The new sections are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license assisted living facilities.

The new sections implement the Health and Safety Code, Chapter 247.001 - 247.066.

§92.71. Introduction and Application: Type E Facilities.

(a) Classification of facilities. A Type E facility is a one-story building(s) providing sleeping accommodations for 16 or fewer residents exclusive of "live-in" houseparents, family, or staff.

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, must be in accordance with these standards. Any exceptions are specifically mentioned.

(2) For existing buildings and structures which are converted to assisted living occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing section of the Texas Department of Human Services (DHS).

(3) Buildings and structures must conform to the 1988 edition of the National Fire Protection Association (NFPA) 101, as published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269. DHS has the option, for new construction only, of accepting compliance with later editions of the code, in their entirety, when required by local building authorities.

(A) All Type E facilities must conform to NFPA 101, Chapter 21.

(B) Other chapters, sections, subsections, or paragraphs of the NFPA 101, such as Chapters 1 through 7 and Chapter 31, must apply as referenced or intended for their relation to Chapter 21.

(4) New construction is subject to local codes. The description of the occupancy may vary with local codes. In the absence of local codes or their enforcement for new construction, the department will require conformance to the fundamentals of the following codes:

(A) the Uniform Building Code, 1988 edition by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, 'R' Occupancy, Divisions 1 and 3, congregate residences;

(B) the Uniform Plumbing Code, 1988 edition, as published by the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032;

(C) the National Electrical Code as specified under NFPA 101; and

(D) the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America for illumination systems' design and installation, except as may be modified in this subchapter.

(5) An existing building either occupied as an assisted living facility at the time of initial inspection by DHS or converted to occupancy as an assisted living facility must meet all local requirements pertaining to that building for that occupancy. DHS will require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes, or ordinances are more stringent than these standards for assisted living, the more stringent requirements will govern.

(6) Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(7) The facility must meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: the Americans with Disabilities Act of 1990 (Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

§92.72. General Requirements: Type E Facilities.

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents is based on evacuation capability. In accordance with Chapter 21 of this title (relating to Residential Board and Care Occupancies), residents of Type E facilities are classified as "prompt" evacuation capability.

(b) Evacuation procedures. Residents must be able to demonstrate to the Texas Department of Human Services (DHS) that they can travel from their living unit to a centralized space, such as lobby, living, or dining room within a 3-minute period without staff assistance.

(c) Operational features.

(1) All fires causing damage to the facility and/or equipment must be reported to DHS within 72 hours. Any fire causing injury or death to a resident must be reported immediately. A telephone report must be followed by a written report on a form which will be supplied by DHS.

(2) Fire drills must be conducted quarterly on each shift with at least one drill conducted each month. The drills may be announced in advance to the residents. The drills must involve the participation of the staff in accordance with the emergency plan. Residents must be informed of evacuation procedures and locations of exits. All fire drills must be documented on a form provided by DHS.

(3) Smoking regulations must be established, and smoking areas must be designated for residents and staff. Ashtrays of noncombustible material and safe design must be provided in smoking areas.

(4) The administration must have in effect and available to all supervisory personnel written copies of a plan for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge, and from the building when necessary. The plan must include special staff actions, including fire protection procedures needed to ensure the safety of any resident, and must be amended or revised when needed. All employees must be periodically instructed and kept informed with respect to their duties and responsibilities under the plan. A copy of the plan must be readily available at all times within the facility.

(d) Construction.

(1) There must be separation from other occupancies. A common wall between an assisted living facility and another occupancy must be not less than a two-hour fire-rated partition (The partition must be as defined by National Fire Protection Association Standards.). A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An exception is where an unlicensed occupancy occurs in the same building or structure and is so intermingled that separate safeguards are impracticable. The means of egress, construction, protection, and other safeguards must comply with the NFPA 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces must have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8" gypsum board (20-minute fire rating), unless approved otherwise by DHS. A sprinkler system will not substitute for the minimum construction requirements.

(3) Interior wall and ceiling finish must be Class C, or better. Flame spread rate requirements must be as specified in NFPA 101, §6-5. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(4) Doors between resident rooms and corridors or public spaces must be smoke-resisting doors that latch in their frames.

(5) All hazardous areas, as defined in the NFPA 101, Chapter 21, must be one-hour fire-separated or provided with sprinkler protection or both if considered severe. Gasoline, volatile materials, oil base paint, or similar products must not be stored in the building housing residents.

(e) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. Facilities must provide a manual fire alarm system, with smoke detection that complies with Household Fire Warning Equipment (NFPA 74), in accordance with NFPA 101, Section 7-6. Exception: Existing facilities with 20-minute interior sheathing, no hazardous areas, interconnected smoke detectors on every level and in each bedroom, Class "C" or better interior finish, smoke resisting bedroom doors, and two remote exit routes are not required to have a manual pull.

(2) Sprinkler systems. When installed or required, sprinkler systems must meet the following criteria. Facilities may have a system that meets NFPA 13D requirements. Automatic sprinklers may be omitted in small compartmented areas, such as closets not over 24 square feet and bathrooms not over 55 square feet, provided such spaces are finished with lath and plaster, or materials with a 15-minute finish rating.

(f) Site and location.

(1) The facility must be serviced by a paid or volunteer fire fighting unit as approved by DHS. Water supply for fire fighting purposes must be as required and approved by the fire fighting unit.

(2) Any site or building conditions that are a fire hazard, health hazard, or physical hazard must have corrections made as determined by DHS.

(3) The facility must provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space must be provided for each four beds or fraction thereof, or per local code, whichever is more stringent.

(4) Ramps, walks, and steps must be of slip-resistive texture and uniform, without irregularities. Ramps must not exceed 1:12 slope and must meet handicap standards for width. Guardrails, fences, or handrails must be provided where grades make an abrupt change in level.

(5) All outside areas, grounds, and adjacent buildings on the site must be maintained in good condition and kept free of rubbish, garbage, untended growth, etc., that may constitute a fire or health hazard. Site grades must provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(g) Sanitation and housekeeping.

(1) Wastewater and sewage must be discharged into an approved sewerage system or an onsite sewerage facility approved by the Texas Natural Resource Conservation Commission or its authorized agent.

(2) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and must be obtained from a water supply system, the location, construction, and operation of which are approved by DHS.

(3) Waste, trash, and garbage must be disposed of from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. The facility must comply with 25 TAC §§1.131-1.137 (concerning Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(4) Operable windows must be insect screened.

(5) An ongoing pest control program must be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must be used.

(6) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated with operable windows or powered exhaust for odor control. Facilities may vent into an attic in accordance with the Uniform Building Code or local building code.

(7) In kitchens and in laundries, there must be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(8) The facility must be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors must be maintained in good condition and cleaned regularly; walls and ceilings must be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars must be kept in an organized manner. No storage will be permitted in the attic spaces.

(9) The facility must be capable of being ventilated through the use of windows, mechanical ventilation, or a combination of both. Interior areas designated for smoking within the building must have mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(10) If the facility provides linens to the residents, the quantity of available linen must meet the sanitary and cleanliness needs of the residents. Clean linens must be stored in a clean area.

(h) General safety features. The facility must have an annual inspection by the local fire marshal.

(1) The building must be kept in good repair; electrical, heating, and cooling must be maintained in a safe manner. DHS may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city/county building official having jurisdiction, licensed electrician, or a registered professional engineer. Use of electrical appliances, devices, and lamps must be such as not to overload circuits or cause excessive lengths of extension cords.

(2) Existing furnace and water heater installations may be continued in service, subject to approval by DHS.

(3) Open flame heating devices are prohibited. All fuel burning heating devices must be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(4) There must be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulance, EMS, and poison control center, must be posted conspicuously at or near the telephone.

(5) An initial pressure test of facility gas lines from the meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must be maintained by the facility. Any unsatisfactory conditions must be corrected promptly.

(6) Exterior and interior stairs must have handrails that are firmly secured to prevent falls.

(7) Cooling and heating must be provided for occupant comfort. Conditioning systems must be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas.

(8) The Illumination Engineering Society of North America recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 footcandles in resident rooms during the day and 20 footcandles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 footcandles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(9) Floor, ceiling, and wall finish materials must be complete and in place to provide a sanitary and structurally safe environment.

(i) Portable fire extinguishers. Portable fire extinguishers must be provided and maintained to comply with the provisions of NFPA 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by the manufacturer.

(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon for water type or five pound for ABC type.

(2) Extinguishers must be installed on supplied hangers or brackets or be mounted in cabinets approved by DHS.

(3) Extinguishers must be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers with a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than 3 1/2 feet above the floor. The clearance between the bottom of the extinguisher and the floor must not be less than four inches.

(5) Portable extinguishers provided in hazardous rooms must be located as close as possible to the exit door opening and on the latch (knob) side.

(6) Staff must be appropriately trained in the use of each type of extinguisher in the facility.

(7) Regular monthly inspections or "quick checks" must be made by facility representatives to assure that extinguishers are in the proper location, condition, and working order. Annual maintenance or "thorough checks" must be accomplished in accordance with National Fire Protection Association Standard Number 10A (NFPA 10A) by competent personnel licensed or certified to perform servicing by the State Fire Marshal. Unserviceable extinguishers must be replaced.

(j) Waste and storage containers.

(1) Metal waste baskets of substantial gauge or any U.L. or F.M. approved containers must be provided in all areas where smoking is permitted.

(2) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any U.L. or F.M. approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(k) Accessibility provisions. The physical plant of facilities housing residents with physical disabilities and/or mobility impairments must comply with applicable federal, state, and local requirements for persons with disabilities.

(l) Resident accommodations.

(1) Resident bedrooms.

(A) Bedroom usable floor space must not be less than 80 square feet for a one-bedroom and not less than 60 square feet per bed for a multiple bedroom. A bedroom must be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the department. Bedrooms for persons with physical disabilities and/or mobility impairment must meet accessibility standards for access around the bed or beds, a minimum of three feet clear width for access aisles.

(B) A facility must have no more than 50% of its beds in bedrooms of three or more. A bedroom must have no more than four beds.

(C) Each bedroom must have at least one operable window with outside exposure. The window sill must be no higher than 44 inches from the floor and must be at or above grade level. The window must be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20 inches x 41.2 inches high and minimum height of 24 inches x 34.2 inches wide). Windows required for evacuation must not be blocked by bars, shrubs, or any obstacle that would impede evacuation. In existing buildings, if the window is not required for the secondary means of escape, the window size and sill height requirements will not apply, provided the windows meet the Uniform Building Code requirements or local building code.

(D) In the event the resident does not provide his or her own furnishings, the facility must provide for each resident a bed with mattress, chair, table or dresser, and enclosed closet space for clothing and personal belongings. Drawer space must be provided. Furnishings provided by the facility must be maintained in good repair.

(E) All resident rooms must open upon an exit, corridor, living area, or public area and must be arranged for convenient resident access to dining and recreation areas.

(F) A staff or attendant area must be provided in each separate building. The area must consist of a desk or writing surface and telephone. An exception is that facilities with separate buildings grouped together, and connected by covered walks, need not have staff or attendant areas on each building, provided the areas are not more than 200 feet walking distance from the furthest resident living unit. The areas must have a communication system and fire alarm annunciation indicating the units served.

(G) Facilities which consist of separate buildings must have a communication system from each resident living unit to a central staff location. This communication system may be a direct telephone, nurse call, or intercom.

(2) Resident toilet and bathing facilities.

(A) All bedrooms must be served by separate private, connecting, or general toilet rooms for each sex, if a facility houses both sexes. The general toilet room or bathing room must be accessible from a corridor or public space. A lavatory must be readily accessible to each water closet. At least one water closet, lavatory, and bathing

unit must be provided on each sleeping floor accessible to residents of that floor.

(B) One water closet and one lavatory for each six occupants or fraction thereof is required. One tub or shower for each 10 occupants or fraction thereof is required.

(C) Privacy partitions and/or curtains must be provided at water closets and bathing units in rooms for multi-resident use.

(D) Tubs and showers must have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(E) Resident-use hot water for lavatories and bathing units must be maintained between 100 degrees Fahrenheit and 125 degrees Fahrenheit.

(F) Towels, soap, and toilet tissue must be available at all times for individual resident use.

(3) Resident living areas.

(A) Social-diversional spaces such as living rooms, day rooms, lounges, or sunrooms must be provided and have appropriate furniture. A minimum of 120 square feet must be provided in at least one space regardless of the number of residents. This space must have exterior windows providing a view of the outside.

(B) The total space requirement for social-diversional areas must be 15 square feet per bed, with the 120 square foot minimum.

(4) Resident dining areas.

(A) A dining area must be provided and have appropriate furnishings. A minimum of 120 square feet must be provided in at least one space, regardless of the number of residents. This space must have exterior windows providing a view of the outside.

(B) Access to a dining area from the resident living units or bedrooms must be covered.

(C) The total space requirement for a dining area must be 15 square feet per licensed bed, with the 120 square foot minimum.

(D) The total living-dining area(s) can be a single or interconnecting space with a minimum of 240 square feet of area.

(5) Storage areas. The facility must provide sufficient separate storage spaces or areas for the following:

(A) records and office supplies;

(B) locked areas for medications and medical supplies. Poisons must be stored in a locked area and separate from all medications and preparation;

(C) equipment supplied by the facility for resident needs, such as beds, or mattresses;

(D) cleaning supplies and janitorial needs;

(E) food storage;

(F) clean linens and towels, if furnished by the facility;

(G) lawn and maintenance equipment, if needed; and

(H) soiled linen storage or holding room(s), if the facility furnishes linen.

(6) Kitchen. The facility must have a kitchen or dietary area to meet the general food service needs of the residents. It must include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(7) Laundry.

(A) If linen is processed off the site, the following must be provided on the premises:

(i) a soiled linen holding room provided with adequate forced exhaust ducted to the exterior; and

(ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room(s).

(B) Resident-use laundry, if provided, must utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area must be one-hour fire separated or provided with sprinkler protection.

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 21, 2000.

TRD-200005878
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 438-3108

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PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 709. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT INTEGRATED BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

40 TAC §§709.101-709.113

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of Chapter 709, consisting of §§709.101-709.113, concerning the Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care program. As part of the rule review required by the Texas Government Code, §2001.039 and the General Appropriations Act of 1997, Article IX, §167, TDPRS is proposing to delete obsolete rules in this chapter because TDPRS never implemented the Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care program.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed repeal will

be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Fields 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 that obsolete rules will be deleted. There will be no effect on large, small, or micro businesses because the program was never implemented. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Questions about the content of the proposal may be directed to Clarice Cefai at (512) 438-5330 in TDPRS's Federal Funds Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-134, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The repeals are proposed under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§709.101. Introduction.
§709.102. Definitions.
§709.103. Purpose.
§709.104. Eligibility Requirements.
§709.105. Covered Services.
§709.106. Prior Authorization, Procedures.
§709.107. Provider Qualifications.
§709.108. Recordkeeping and Documentation.
§709.109. Care Coordination.
§709.110. Reserve Bed Days.
§709.111. Utilization Review.
§709.112. Quality Assurance.
§709.113. Reimbursement for Services.

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

Filed with the Office of the Secretary of State, on August 18, 2000.

TRD-200005842
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: December 1, 2000
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT
SUBCHAPTER K. FUNDS MANAGEMENT

40 TAC §§809.221, 809.225

The Texas Workforce Commission (Commission) proposes amendments to §§809.221 and 809.225, relating to General Funds Management and Continuity of Care for child care services and priorities for Choices, Transitional and Texas Workforce Applicant Child Care services.

Purpose: The purpose of the rule amendments is to reinforce the statutory and regulatory priorities on Child Care services and provide guidance regarding the objectives of affording continuity of care for families receiving Commission-funded child care services.

Generally, the rule amendments continue to require placing an eligible Choices, Transitional or Texas Workforce Applicant's children into care. However, the rules makes clear that if necessary, due to limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priority clients receive child care services. In other words, a Board shall set policies for discontinuing child care services for families that are other than Choices, Transitional or Texas Workforce Applicant families in order to make services available for a Choices, Transitional or Texas Workforce Applicant child care family if there is limited funding. The amendments ensure that funds are used for families that are striving for but have not achieved self-sufficiency and who are required to receive child care services to assist them in becoming self-sufficient.

The amendments require Boards to develop policies that reinforce the priorities set forth in the rules and state law and inform families that are not within the statutory and regulatory categories (Choices, Transitional or Texas Workforce Applicant) that the provision of child care services is subject to the limitation of funds and may be terminated at a specified time, but not less than 15 days, after written notice of the termination of child care services. The Child Care rules at 40 TAC §809.72(5) provide that parents have the right to "(5) written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care . . . ." Boards must ensure that the provision of a notice period of not less than 15 days is incorporated into the policy designed to implement the amended continuity of care provisions that reinforce the priority clients needing Choices, Transitional or Texas Workforce Applicant child care.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

There are no anticipated economic costs to persons required to comply with the rules; however, some persons that are receiving a child care subsidy may no longer be able to utilize the cost savings resulting from having the Child Care and Development Fund subsidize the child care of the family.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated or required to do anything by the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules.

Barbara Cigainero, Director of Workforce and Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Nancy Pechacek Hard, Texas Workforce Commission Building, 101 East 15th Street, Room 442T, Austin, Texas 78778, (512) 936-0474. Comments may also be submitted via fax to (512) 463-5067 or e-mailed to: Nancy.Hard@twc.state.tx.us. Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The amended rules are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.221. General Funds Management.

(a) Boards shall ensure that resources are proportionately allocated among eligibility groups so that child care services are [~~priority for intake services is~~] assured for Choices, Transitional and [~~Choices~~] Texas Workforce Applicant eligible children.

(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so long as the provision of care to the child does not result in another child being removed from care.

§809.225. Continuity of Care.

(a) General Principle. Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:

(1) Choices Child Care under §809.102 of this Chapter,

(2) Transitional Child Care under §809.101 of this Chapter, or

(3) Texas Workforce Commission Applicant Child Care under §809.103 of this Chapter.

(c) Children who no longer receive Texas Department of Protective and Regulatory Services funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services.

(d) [~~(b)~~] Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met unless otherwise required on a case-by-case basis to provide priority child care as referenced in subsection (b) 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 17, 2000.

TRD-200005828
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 1, 2000
For further information, please call: (512) 463-8812

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WITHDRAWN RULES

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.139

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1259).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005891

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SUBCHAPTER C. NEW LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.235

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1260).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005892

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37 TAC §259.236

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1260).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005893

♦ ♦ ♦

SUBCHAPTER H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.741

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1263).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005894

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CHAPTER 260. COUNTY CORRECTIONAL CENTERS

SUBCHAPTER B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.134

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1263).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005895

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CHAPTER 261. EXISTING CONSTRUCTION RULES

SUBCHAPTER A. EXISTING MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.139

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1264).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005896

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SUBCHAPTER B. EXISTING LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.234, §261.235

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section's, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended sections as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1265).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005897

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SUBCHAPTER C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.333

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1266).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005898

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CHAPTER 291. SERVICES AND ACTIVITIES

SUBCHAPTER C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §291.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Commission on Jail Standards has been automatically withdrawn. The amended section as proposed appeared in the February 18, 2000 issue of the *Texas Register* (25 TexReg 1270).

Filed with the Office of the Secretary of State on August 22, 2000.

TRD-200005899

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 25. TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT FINANCE PROGRAM RULES

4 TAC §§25.1 - 25.12

The Board of Directors of the Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture, adopts new §§25.1 - 25.12, concerning the Rural Development Finance Program. New §25.7 is adopted with changes to the proposal published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6015). New §§25.1 - 25.6 and 25.8 - 25.12 are adopted without changes and will not be republished.

Section 25.7 has been changed at subsection (a)(2) to clarify that a to be eligible for the program, a project must serve to create or retain employment in the rural area. This change was made in response to comments received on the section. The new sections are adopted for the implementation and administration of the Rural Development Finance Program pursuant to Texas Agriculture Code, Chapter 58. The new sections establish a mechanism by which TAFA will be able to provide financial assistance to borrowers for the enhancement of rural economic development in the state.

New §§25.1 - 25.5 state the authority and purpose of the program, provide definitions, describe the procedure for public information requests, and provide an address for communications with TAFA. New §§25.6 - 25.7 describe the Texas Agricultural Fund and identify the project eligibility requirements and the eligible and ineligible uses of loan proceeds. New §25.8 describes the requirements for filing an application and the application review process by TAFA. New §25.9 describes the contents of an application to the program. New §25.10 describes the general terms and conditions of TAFA's commitment, including minimum and maximum commitments, terms, interest rate, and maturity. New §25.11 describes the criteria for approval of a commitment by TAFA. New §25.12 provides authority for TAFA staff to act as necessary for the collection, settlement and enforcement of financing approved under the program.

Comments generally in support of the proposal were received from the Texas Farm Credit Bank, Texas Association of Regional Councils, the Rockport-Fulton Area Chamber of Commerce, the City of Los Fresnos, and one individual. Some comments received were on specific proposed sections as follows. On §25.3, the Texas Association of Regional Councils requested that the definition of applicant, §25.3(2) to be clarified to include the Councils of governments as an eligible applicant. The Board believes that the addition of Councils of government to the definition of applicant is not necessary because regional councils are defined by law as political subdivisions of the state, and as such, would qualify to submit an application as an "other unit of public government". No change is made to the definition of applicant. Other comments, in form of questions about the program, rather than comments on this section were whether loans would be both direct and guaranteed and requesting more information on how a guaranty would work.

Several comments and questions were received on §25.7, including comments, as noted previously on what is meant by the terms "create or retain employment, either directly or indirectly" in §25.7(a)(2). The department has adopted §25.7(a)(2) with changes to delete the terms "either directly or indirectly", to eliminate confusion and to allow the Board more flexibility in determining whether or not a project serves to create or retain employment. This paragraph is also changed to clarify that the creation or retention of employment should be in the rural area where project is located. In addition, questions were received on this section regarding what is meant by reasonable equity, whether real estate tax abatement or donated or leased land may be used to demonstrate equity, whether in the case of multifamily housing, funds can be used for both construction and permanent financing, whether cooperative will have a problem providing personal guaranties, and whether the program will consider or determine whether or not a project would be consistent with the goals of the community without requiring the submission of a community's master plan or other similar document. Generally, the Board's definition of reasonable equity would not include a tax abatement, but may include donated or leased land owned by the applicant. In regards to cooperatives providing personal guaranties, cooperatives have been able to provide personal guaranties through their directors in the past to qualify for financial assistance under a Board program. The issues raised in comments received on this section will be more specifically addressed in the Board's Credit Policy and Procedures document referenced in new §25.11(c).

On §25.8(a) one comment expressed some confusion regarding whose forms will be used, relative to direct loan program because of the use of the word "may" in the rule. The Board anticipates that most applicants will use forms developed by the Authority. However, there may be a need in special circumstances

for an applicant to develop its own forms. The Board believes subsection (a) is clear in this regard and no changes were made based on this comment.

On §25.9, regarding contents of the application, Farm Credit Bank received comments that, although the application is not unreasonable, it may require a quantity of information that may be viewed as cumbersome by some applicants. The Board believes that the information requested is necessary in order for staff and the board to conduct a thorough evaluation of an applicant and accordingly, no changes were made to this section. Section 25.9(4) requires a business plan. One commenter asked whether this requirement could include master plans or strategic plan. The Board believes master plan or strategic plan may be submitted, but may not necessarily replace the business plan if it does not include all of the information required by this section. All of the information required by this section must be submitted in some form in order for the Board and staff to adequately evaluate an application. Another question on this section was whether an independent auditor's report for the past three years would be acceptable as meeting requirements for historical financial information, including pro forma balance sheet, pro forma cash flow and income statements? The Board believes that as with the question on the master plan or strategic plan, historical financial information may be submitted in a variety of forms as long as the basic financial information similar to that found in a pro forma balance sheet or cash flow and income statement is included.

A question was submitted in regards to §25.9(12), relating to construction projects. The question was whether the program would require at least three quotes for construction projects submitted? The program requirements do not speak to this issue and do not require submission of quotes, however, the project applicant may have requirements for bids in their procedures, especially if they are a governmental entity. Finally, a question was submitted in regards to §25.9(13), relating to documentation for the preliminary design stage. The question is whether this requires contracting with an engineering firm and having full-scale drawings finalized; and, if so, whether the cost of having this work done in advance be reimbursed through the program? This requirement would require preliminary drawings to be finalized with enough information provided to allow the Board to fully evaluate the project. In regards to reimbursement of costs, the costs of hiring a contractor to develop a design could be included as part of the project costs and could be reimbursed as such, however, if the applicant is not approved for financing, those costs could not be paid by the program. The Board believes that the language in this paragraph is clear and no changes have been made in the rule adoption.

The new sections are adopted under the authority of the Texas Agriculture Code (the Code), §58.023, which provides that TAFA has the power to adopt rules and procedures as necessary to carry out Chapter 58; and Texas Government Code, §2001.004, which requires that state agencies adopt rules of practice stating the nature and requirement of all available formal and informal procedures.

§25.7. Project Eligibility Requirements.

(a) Projects. An applicant is eligible for a commitment from the Authority if the proposed project meets the following criteria:

(1) the project provides significant benefits for the maintenance, expansion or development of rural economic development activity;

(2) the project will create or retain employment in the rural area;

(3) the applicant provides a reasonable level of equity for the project as defined in the credit policy and procedures;

(4) the applicant is a legal entity under the laws of the United States of America and the State of Texas;

(5) the applicant has a principal place of business in the state; and

(6) if the applicant is a corporation, partnership, cooperative or joint venture, the applicant's principal owner or owners provide personal guarantees satisfactory to the Authority.

(b) Project costs. The proceeds of the commitment provided by the Authority may be used only to finance expenditures incurred in connection with the development of the project as identified in the budget filed with the application and approved by the board.

(c) Ineligible project costs. Any expenditure that is not identified in the approved budget filed with the application, or is otherwise prevented by regulation or statute, is not eligible for financing hereunder, unless the applicant provides evidence that such expenditure is necessary for completion of the project and will not increase the commitment approved.

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 17, 2000.

TRD-200005835
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 6, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. REGULATED LOAN LICENSES

DIVISION 1. GENERAL PROVISIONS

7 TAC §§1.2, 1.9, 1.13

The Finance Commission of Texas (the commission) adopts the repeal of §§1.2, 1.9, and 1.13. This repeal is necessary because the sections that are proposed for repeal relate to Communications to Commissioner, Annual Reports, and Review of Records. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005844
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 3. REQUIRED BOOKS AND RECORDS

7 TAC §§1.51 - 1.54

The Finance Commission of Texas (the commission) adopts the repeal of §§1.51 - 1.54. This repeal is necessary because the sections that are proposed for repeal relate to Minimum Books: Files and Records Required to Be Kept by Licensees, Rate and Refund Charts, File for Official Correspondence and Reports, and Acceptance of Equivalent Records by Commissioner. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register*(25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005845
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 4. INSURANCE

7 TAC §1.76, §1.79

The Finance Commission of Texas (the commission) adopts the repeal of §1.76 and §1.79. This repeal is necessary because the sections that are proposed for repeal relate to Loss Registers, and Automobile Policies. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register*(25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005846
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 5. REFUND

7 TAC §1.95

The Finance Commission of Texas (the commission) adopts the repeal of §1.95. This repeal is necessary because the section that is proposed for repeal relates to Methods of Correcting Errors. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register (25 TexReg 6248).*

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005847

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 8. UNCLAIMED FUNDS

7 TAC §§1.131 - 1.135

The Finance Commission of Texas (the commission) adopts the repeal of §§1.131 - 1.135. This repeal is necessary because the sections that are proposed for repeal relate to Escheat Suspense Account, Required Information, Conversion or Reduction Prohibited, Escheat to State, and Length of Record Preservation. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005848
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 9. COLLECTION PRACTICES

7 TAC §1.153

The Finance Commission of Texas (the commission) adopts the repeal of §1.153. This repeal is necessary because the section that is proposed for repeal relates to Record of Contracts. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005849
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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DIVISION 10. ADVERTISING

7 TAC §1.172

The Finance Commission of Texas (the commission) adopts the repeal of §1.172. This repeal is necessary because the section that is proposed for repeal relates to Scrapbooks. This repeal is adopted without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6248).

The agency received no comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Subchapter F of Chapter 342, Texas Finance Code and the rest of Title 4.

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 18, 2000.

TRD-200005850
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

7 TAC §§1.830 - 1.839

The Finance Commission of Texas (the commission) adopts new §§1.830 - 1.839 concerning regulated loan licensee duties and record requirements. The new rules are adopted with nonsubstantive changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6258).

Simultaneously, the Finance Commission is repealing various rules and adopting these rules in their place. The rules being repealed were reviewed and those being proposed to be adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist.

The agency received no comments on the proposal.

Section 1.830 specifies the records that must be maintained for loans made under the authority of Chapter 342, Subchapter E and F. The section also prescribes various procedures in the course of making or servicing a loan, such as in the disbursement of official fees collected from the borrower. This rule will replace 7 TAC §1.51 that is being simultaneously proposed for repeal. The rule is necessary to ensure that the appropriate documentation is maintained by licensed lenders ensuring compliance with appropriate state and federal laws.

Section 1.831 specifies the records that must be maintained for loans made under the authority of Chapter 342, Subchapter G. The section also prescribes various procedures in the course of making or servicing a loan, such as in the disbursement of official fees collected from the borrower. This rule is parallel to §1.830 in order to maintain consistency between the record keeping rules. The rule is necessary to ensure that the appropriate documentation is maintained by licensed lenders to ensure compliance with appropriate state and federal laws.

Section 1.832 specifies the records that must be maintained for loans brokered under the authority of Chapter 342, Subchapter G. These rules closely conform to similar rules promulgated by the Savings and Loan Commissioner addressing required records by mortgage brokers for first mortgages. The rule is necessary to ensure that the appropriate documentation is maintained by licensees to ensure compliance with appropriate state and federal laws.

Section 1.833 addresses other required records such as general business records. These rules replace 7 TAC §1.53 and §1.172. The rule is necessary to ensure that appropriate documentation is maintained by licensees to ensure compliance with appropriate state and federal laws.

Section 1.834 provides the requirements, procedures, and flexibility for licensees who choose to maintain records electronically or optically image records. This rule will replace 7 TAC §1.54. The rule is necessary to ensure that automated systems appropriately record and maintain sufficient information to demonstrate compliance with state and federal laws.

Section 1.835 authorizes the commissioner to require a licensee to review loan records and make corrections, if it is determined during the course of an examination that a licensee is engaging in transactions that do not comply with the law or the licensee is not maintaining records that comply with the law. This rule will replace 7 TAC §1.13. The rule is necessary to ensure that transactions comply and that records are being maintained with the applicable law.

Section 1.836 provides the procedures for correcting violations or laws or errors on accounts. This rule will replace 7 TAC §1.95. The rule is necessary to provide a uniform procedure for curing violations of law and correcting entries on accounts.

Section 1.837 details the procedures for handling unclaimed funds that are due to a borrower. The rule provides procedures that conform to Chapter 25 of the Texas Property Code.

Section 1.838 sets the required date and states the requirement for filing an annual report. The rule replaces 7 TAC §1.9.

Section 1.839 proscribes the formula for assessing examination fees. The fee schedule is currently in place and the rule simply clarifies the procedure. The rule further provides for an increased fee to be assessed to licensees who require an expedited follow-up examination due to noncompliance issues. The rule is necessary to permit the agency to recover the direct and indirect costs associated with conducting examinations.

The new rules are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

These rules affect Chapter 342 of the Texas Finance Code.

§1.830. Files and Records Required (Subchapter E and F Lenders).

Each licensee must maintain records with respect to each loan made under Chapter 342, Subchapter E and F of the Texas Finance Code and make those records available for examination.

(1) Loan register or transaction log. A loan register must be maintained currently. A licensee may file, in chronological order, copies of any loan document or form prepared at the time a loan is made reflecting the information set forth in subparagraphs (A)-(D) of this paragraph to serve as a loan register. A loan register must contain the following information:

(A) Date of loan (day, month, and year);

(B) Surname of borrower;

(C) Total of payments (amount of loan), and;

(D) Loan number. Loans may be numbered in ascending sequence as made or may bear an account number permanently assigned to one borrower with a numerical suffix reflecting the number of loans to the borrower. A permanent account number may be used in an automated system for each series of loans to a borrower; however, a consecutive suffix number must be assigned to each loan in the series to distinguish it from the others.

(2) Alphabetical index of current borrowers. A current alphabetical index or report of outstanding loans showing the full name of each borrower, coborrower, or other obligor on the loan and the loan number assigned each loan must be maintained.

(3) Borrower's account record.

(A) A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(i) Loan number as recorded on loan register;

(ii) Loan schedule and terms itemized to show:

(I) Date of loan;

(II) Number of installments;

(III) Due date of installments;

(IV) Amount of each installment, and;

(V) Maturity date.

(iii) Name, address, and telephone number of borrower;

(iv) Names and addresses of coborrowers or other obligors, if any;

(v) Type or brief description of security; if none, so indicate;

(vi) Total of payments (amount of loan);

(vii) Amount financed (cash advance);

(viii) Total interest charges on Subchapter E loans, including additional days charges for irregular installments; or, if the loan is made under Subchapter F, the acquisition charge and the installment account handling charge shown separately;

(ix) Amount of premium charges for insurance itemized to show:

(I) Credit life insurance;

(II) Credit accident and health (disability) insurance;

(III) Personal property insurance;

(IV) Automobile physical damage insurance;

(V) Nonfiling insurance, and;

(VI) Involuntary unemployment insurance.

(x) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made and which is to be disbursed within the period of 30 days as prescribed in paragraph (5)(D)(i) of this section;

(xi) Amount of personal property insurance when the amount of insurance is not equal to amount of the total of payments (amount of loan), and;

(xii) Individual payment entries itemized to show:

(I) Date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) Amounts received for application to principal and precomputed interest, and;

(III) Amounts received for default, deferment, or other authorized charges.

(B) Corrective entries are permitted when justified.

(C) In the event a loan is prepaid in full, refunds of unearned charges and unearned insurance premiums are required. A licensee is responsible for substantiating final entries and that refunds were paid to the borrower. Refund amounts must be itemized to show:

(i) Interest refunded;

(ii) Credit life, accident and health, involuntary unemployment, single interest, and personal property insurance charges refunded, showing separately the refund applicable to each separate insurance policy or coverage, and;

(iii) Dual automobile physical damage insurance when borrower requests cancellation of the policy.

(D) When an error is made on the individual borrower's account record, a line must be drawn through the improper entry and the correct entry made above or below. No erasures or other obliterations may be made on the payments received section of a manual individual record.

(E) When accounts are transferred from a licensed location, a separate record of these accounts must be maintained by the transferor. The record must show the name of the borrower, the account number, the date of transfer, and the location to which the accounts are transferred.

(F) Separate individual borrower's account records must be maintained for open and closed loans. Any systematic method of filing may be utilized so long as any account record may be readily located by reference to either a name or loan number.

(4) Borrower disbursement record. The loan contract, statement of loan or account record, or single separate disbursement record must show the individual amounts paid out at the borrower's direction or request on his behalf or for his benefit. Each disbursement must be substantiated by receipts, documents, canceled checks, or other records.

(5) Fee record.

(A) The amount of official fees collected at the time the loan is made and to be disbursed within the period prescribed in subparagraph (D)(i) of this paragraph must be disclosed on the individual borrower's account record.

(B) Information concerning fees for termination, continuation, or amendment collected at the time a loan is made but not disbursed, as prescribed by subparagraph (D)(i) of this paragraph, or collected subsequent to the making of the loan, must be entered in a record. Entries to this record must be in chronological order as to the date the fees are collected. The record must show the date each fee is collected, the amount of each fee collected, the date each fee is disbursed and the amount of each fee disbursed. In addition, if a fee is collected in advance for the purpose of filing a UCC-3 to "continue" a notice of security interest, the record must show the date the present filing expires.

(C) If more than one fee is included in a disbursement by check to the recording office, the loan number of each account to which the disbursement is related on the check copy, check stub, or voucher must be documented.

(D) Disbursement procedures.

(i) Fees collected at the time a loan is made for recording, amending, or continuing a notice of security interest must be disbursed to the recording agency within 30 days from the date of collection from the borrowers. If fees are not properly disbursed within 30 days, the borrower must be given credit for the fee and any filing may be made only at the licensee's expense. If filing of continuation fees may not be made during the 30 days following the date of the loan due to conflict with §9.403 of the Uniform Commercial Code, the licensee must follow the procedure outlined in subparagraph (B) of this paragraph. (Note: Subparagraph (E)(i) of this paragraph summarizes the filing requirements of §9.403 of the Uniform Commercial Code.)

(ii) Each licensee should disburse, to the recording agency, termination fees collected from borrowers within 30 days from the date the loan is paid in full. If the termination fees are not disbursed within this period, the fees must be returned to the borrowers and the termination effected at expense of the licensee.

(E) Continuation of liens will be dependent upon conformity with the following:

(i) If a licensee desires to continue a notice of security interest on which a maturity date was not initially established on the financing statement, a continuation statement must be filed no later than 60 days after the maturity date and no sooner than six months prior to the maturity date. A licensee may exercise one of the following options when "continuing" a lien:

(I) The cost of filing a continuation statement may be included in the official fees collected in connection with a renewal loan that has a maturity date extending past the end of the five year period or past the initial maturity date.

(II) The filing fee may be collected directly from the borrower within the period for filing prescribed by §9.403 of the Uniform Commercial Code.

(III) The borrower and the licensee may agree to charge the borrower's account for the cost of filing.

(IV) The cost of filing may be borne by the licensee.

(ii) Record of fees collected under this section must be maintained as prescribed in subparagraphs (A) or (B) of this paragraph.

(6) Record of daily transactions. Each licensee must maintain sufficient records to adequately reflect, on an individual account basis, the business occurring during each day. The records must reflect the date on which each transaction occurred.

(7) Record of loans in litigation and repossession.

(A) An index of each repossession as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action. If accounts have been transferred, it must be noted in the index as well as on the record of transferred accounts.

(B) All loan records, account cards, correspondence, and any other pertinent information must be maintained in the borrower's account folders or files. The file must include the following applicable items:

(i) Identification of the collateral sought or acquired by the licensee;

(ii) A copy of the original petition and the most current amended petition, if any;

(iii) Proof of judgment if a judgment is taken and amounts awarded by the court;

(iv) The date and terms of settlement if settlement is made between the borrower and the licensee before judgment;

(v) Record of all payments received after judgment, properly identified and applied;

(vi) When the licensee, acting as a secured party, takes possession of the collateral and disposes of it at a public or private sale as provided under the Uniform Commercial Code, and the sale is not a judicial sale, written evidence substantiating the commercial reasonableness of all aspects of the sale of the collateral, and of its preparation for sale, if any. These documents should include copies of any invoices or receipts, condition reports indicating the condition of the collateral, notice of intended disposition or the waiver of the notice signed after default by the borrower and other obligors, and evidence of fair sale of the collateral. One means of providing evidence of fair sale or the commercial reasonableness of sale is the taking of not less than three bona fide bids. Bids must disclose the names and addresses of the bidders.

(vii) Name and address of purchaser of repossessed collateral.

(8) Loan records and documents.

(A) All obligations signed by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement which gives the commissioner access to the documents. Copies of loan documents, financing statements, loan applications, records of insurance policies issued by or through the licensee in connection with the loan, and books and records required by this rule must be maintained in the licensed location or be made available at some place in the state designated by the licensee in writing to the commissioner. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(B) Loan documents and other records must be maintained as required to evidence compliance with applicable state and federal laws and regulations, including but not limited to, the Equal Credit Opportunity Act and the Truth in Lending Act.

(C) If tangible personal property is taken as collateral on a loan, the loan documents or attachments must describe the property in detail sufficient to identify each individual item taken.

(D) Copies of receipts on cash payments collected outside the licensed office must be maintained.

(E) If an automobile insurance policy is required, a copy of the policy or insurance application and other pertinent records relating to the rating of the policy as finally issued must be maintained in the borrower's file.

(9) Insurance Loss Registers. Each licensee must maintain a register reflecting information on life, accident and health, property insurance, involuntary unemployment, and single interest insurance claims whether paid or denied by the insurance carrier.

(A) Life Insurance Claims. The register pertaining to life insurance claims must show the name of the borrower, the account number, and the date of death. The borrower's individual file or account record must disclose the amount of indebtedness at the time of death, the gross amount of the claim paid, the amount of insurance benefits paid beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness and the check number or numbers by which the amount is paid beneficiaries other than the licensee.

(B) Accident and health insurance claims. The register pertaining to accident and health insurance claims must show the name of the borrower, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Personal property insurance losses. The register pertaining to personal property insurance claims must show the name of the borrower, the account number, the amount of insurance written on tangible personal property other than a motor vehicle, the amount of the settlement, and a notation as to whether the loss is a total or partial loss.

(D) Involuntary unemployment insurance claims. The register pertaining to involuntary unemployment insurance claims must show the name of the borrower, the account number, and the date of the initial filing of the claim.

(E) Single interest insurance claims. The register pertaining to single interest insurance claims must show the borrower's name, the account number, the amount of the insurance written on the motor vehicle, the amount of the settlement, and a notation as to the basis of the settlement (actual cash value, repair, or the remaining outstanding balance).

(10) Retention of records. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representatives, and must be retained for a period of four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later.

§1.831. Files and Records Required. (Subchapter G Lenders)

Each licensee must maintain records with respect to each loan made under Chapter 342, Subchapter G of the Texas Finance Code and each home equity loan made under Article XVI, §50 of the Texas Constitution and make those records available for examination.

(1) Loan register or transaction log. A loan register must be maintained. A licensee may file, in chronological order, copies of any loan document or form prepared at the time a loan is made reflecting the information set forth in subparagraphs (A)-(D) of this paragraph to serve as a loan register. A loan register must contain the following information:

(A) Date of loan day (day, month, and year);

(B) Surname of borrower;

(C) Total of payments (amount of loan), and;

(D) Loan number.

(2) Record of individual borrower's account.

(A) A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(i) Loan number as recorded on loan register;

(ii) Loan schedule and terms itemized to show:

(I) Date of loan;

(II) Number of installments;

(III) Due date of installments;

(IV) Amount of each installment, and;

(V) Maturity date.

(iii) Name, address, and telephone number of borrower;

(iv) Names and addresses of coborrowers, if any;

(v) Legal description of real property;

(vi) Principal amount;

(vii) Total interest charges, including additional days charges for irregular installments and points;

(viii) Amount of premium charges for insurance itemized to show:

(I) Credit life insurance;

(II) Credit accident and health (disability) insurance;

(III) Personal property insurance;

(ix) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made.

(x) Individual payment entries itemized to show:

(I) Date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) Actual amounts received for application to principal and interest, and;

(III) Actual amounts paid for default, deferment, or other authorized charges.

(B) Corrective entries are permitted when justified.

(C) In the event a loan is prepaid in full, refunds of unearned charges and unearned insurance premiums may be required. A licensee is responsible for substantiating final entries and for substantiating that refunds due were paid to borrowers. Refund amounts must be itemized to show:

(i) Interest charges refunded, including the refund of any unearned points, and;

(ii) Credit life, accident and health, and personal property insurance charges refunded, showing separately the refund applicable to each separate insurance policy or coverage.

(D) When accounts are transferred from a licensed location, a separate record of these accounts must be maintained by the transferor. The record must show the name of the borrower, the account number, the date of transfer, and the location to which the accounts are transferred.

(3) Borrower disbursement record. The loan contract, statement of loan or account record, or single separate disbursement record must show the individual amounts paid out at the borrower's direction or request on his behalf or for his benefit. Each disbursement must be substantiated by receipts, documents, canceled checks, or other records.

(4) Fee record.

(A) The amount of official fees collected at the time the loan is made must be recorded on the individual borrower's account record.

(B) Disbursement procedures.

(i) Fees collected at the time a loan is made for recording, amending, or continuing a notice of security interest must be disbursed to the recording agency within 30 days from the date of collection from the borrowers.

(ii) Each licensee should disburse, to the recording agency, release of lien fees collected from borrowers within 30 days for the date the loan is paid in full. If the release of lien fees are not disbursed within this period, the fees must be returned to the borrowers and the release of lien effected and the expense borne by the licensee.

(5) Record of daily transactions. Each licensee must maintain sufficient records to adequately reflect, on an individual account basis, the business occurring during each day. The records must reflect the date on which each transaction occurred.

(6) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(7) Loan records and documents.

(A) All obligations signed by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement which gives the commissioner access to the documents. Copies of loan documents, closing statements, loan applications, records of insurance policies issued by or through the authorized lender in connection with the loan, and books and records required by this rule must be maintained in the licensed location or made available at some place in the state designated by the

licensee in writing to the commissioner. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(B) Loan documents and other records must be maintained as required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(8) Insurance Loss Registers. Each licensee must maintain a register reflecting information on life, accident and health, and property insurance claims whether paid or denied by the insurance carrier.

(A) Life Insurance Claims. The register pertaining to life insurance claims must show the name of the borrower, the account number, and the date of death. The borrower's individual file or account record must disclose the amount of indebtedness at the time of death, the gross amount of the claim paid, the amount of insurance benefits paid beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness and the check number or numbers by which the amount is paid beneficiaries other than the licensee.

(B) Accident and health insurance claims. The register pertaining to accident and health insurance claims must show the name of the borrower, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Personal property insurance losses. The register pertaining to personal property insurance claims must show the name of the borrower, the account number, the amount of insurance written on tangible personal property other than a motor vehicle, the amount of the settlement, and a notation as to whether the loss is a total or partial loss.

(9) Retention of records. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representatives, and must be retained for a period of four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later.

§1.832. Files and Records Required. (Subchapter G Mortgage Brokers)

(a) Each licensee must maintain records with respect to each loan brokered under Chapter 342, Subchapter G and make those records available for examination.

(b) Loan register or transaction record. A mortgage register or transaction record, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth at a minimum:

(1) The date of the mortgage loan application;

(2) The surname and address of each mortgage applicant;

(3) A description of the disposition of the application for a mortgage loan, and;

(4) The identity of the person or entity who initially funded or acquired the mortgage loan.

(c) Mortgage loan file or borrower's file. A mortgage loan file or borrower's file for each mortgage loan application received must be maintained. Each file must contain at least the following:

(1) A copy of the mortgage loan application;

(2) Either:

(A) A copy of the signed closing statement if the mortgage loan is closed in the name of an entity through which the mortgage broker is providing mortgage lending services, or;

(B) Documentation of the timely denial or other disposition of the application for the mortgage loan.

(3) A copy of each item of correspondence, each evidence of any contractual arrangement or understanding (including any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with the mortgage loan application or its ultimate disposition.

(d) Loan records and documents. Other books and records must be maintained as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) General business records. General business and accounting records concerning disbursement and receipt of fees associated with the mortgage loan activity must be maintained.

(f) Record retention. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representative, and must be retained for a period of four years or a longer period if required by applicable state or federal laws or regulations.

§1.833. Other Required Records.

(a) Official Correspondence File. Each licensee must maintain a separate file for all communications from the Office of Consumer Credit Commissioner and for copies of correspondence and reports addressed to the commissioner. This shall include a copy of the Texas Credit Title, examination reports, and any rules issued by the commissioner.

(b) General business and accounting records. General business and accounting records concerning the financial transactions of the loan business must be maintained.

(c) Supplemental Insurance Records. Each licensee must maintain in the borrower's file supplemental records supporting the settlements or denials of claims reported in the registers. In the case of property insurance claims, these supplemental records must clearly indicate whether the amount of the settlement on each individual item is based on replacement or based on repair. If the reason for the denial of a life insurance or an accident and health insurance claim is based upon the medical records of the borrower, supplemental records supporting the denial of the claim must be forwarded to the commissioner upon request.

(d) Collection Contacts.

(1) A licensee or the licensee's agent must make a written record of each and every contact made by a licensee with the borrower or any other person. The record must also include every contact made by the borrower with licensee. The written record must include the date, method of contact, contacted party, person initiating the contact, and summary of the contact.

(2) Each record must be maintained in a manner that is readily decipherable.

(e) Advertising Record.

(1) Each licensee must maintain, either at the licensed office or at a principal Texas office, so designated to the commissioner, a complete record of all written communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of

billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use, or until the next examination by a representative of the commissioner. The date or period of use of each solicitation or advertisement must be indicated.

(2) If any language other than English is used in any advertising material, a true and correct translation thereof must appear along with the advertising material.

§1.834. Electronic Records.

(a) Records and accounting systems maintained in whole or in part by electronic systems must contain the equivalent information as required in §§1.830 and 1.831 of this title relating to Files and Records Required (Subchapter E and F Lenders) and Files and Records Required (Subchapter G Lenders)). A licensee must provide documentation of the system to the commissioner that explains how the required information is maintained within the system.

(b) If an examination of the system demonstrates that the required records are not being maintained appropriately the commissioner may disapprove the use of the system. A licensee will have 90 days to bring the electronic system into compliance.

(c) Records may be retained and stored using optical image storage media, provided the following requirements are satisfied:

(1) The optical image storage must be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

(2) The stored document or record is made or preserved as part of and in the regular course of business.

(3) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the optical image storage.

(4) The optical image storage system contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(5) The original documents must be maintained for one year after the date of the loan. The optical imaged records must be maintained for the entire required retention period.

(d) A licensee will maintain at the licensee's office a method of viewing documents or records stored pursuant to this section. A licensee must provide a hard copy of any document or record requested by the Commissioner.

§1.835. Review of Records.

If it is determined during the course of an examination the extent of error and discrepancies made by a licensee indicate that the licensee has not been conducting business in substantial compliance with the law, the commissioner may direct the licensee to review the account records and make proper adjustments to any accounts in error or make any appropriate refunds.

§1.836. Correction of Errors or Violations.

(a) Any amount found to be due a borrower may be credited to the next payment or payments on the account of the borrower, if the borrower has an existing obligation to the licensee. The licensee must notify the borrower in writing of the date and amount of the next payment due after this credit has been given.

(b) In lieu of crediting an existing account, refunds may be made directly to the borrower by cash or check.

(c) If the error correction or adjustment to an account is related to an improper charge or proceeds improperly held by the licensee on which interest has been precomputed, the licensee may alternatively credit the final maturing installment or installments of the contract provided that credit is also given the borrower for the proportionate interest originally charged on the amount being credited.

(d) At the time of adjustment if more than half the term of a precomputed loan has expired, then an interest adjustment must be made.

§1.837. Unclaimed Funds.

(a) Escheat Suspense Account. The licensee must transfer any amounts due a borrower not paid within one year, unclaimed funds, to an escheat suspense account. The transfer must be noted on the account record of the borrower.

(b) Required Information. Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. The minimum acceptable evidence of a bona fide attempt must be a registered or certified letter sent to the last known address of the borrower. The licensee must place with the records of the borrower any information that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown.

(c) Use of unclaimed monies. Use of unclaimed funds within the business until such time as paid to the borrower, the estate of the borrower, or to the State of Texas is not prohibited; however, funds transferred to an escheat suspense account must not be commingled with the funds of the business.

(d) Escheat to State. At the end of three years the unclaimed funds must be paid to the State of Texas Comptroller of Public Accounts, Treasury Division, as required by Texas Property Code §72.101.

(e) Record Retention. The records of the escheat suspense account must be retained for a period of ten years.

§1.838. Annual Report.

Each licensee must file the required annual report by May 1 for the prior year's calendar loan activity on forms prescribed by the commissioner and must comply with all instruction relating to submitting the report.

§1.839. Examination Fees.

(a) Assessment. The commissioner will assess and collect a nonrefundable examination fee designed to recover the expenditures associated with the examination function, according to the formula in this section.

(1) General administrative fee per exam ($150.00). The administrative and necessary costs necessary for the expenditures related to an examination;

(2) Administrative fee for each additional day ($100.00). The administrative and indirect costs necessary for the expenditures related to each additional examination day required, and;

(3) Hourly examination rate ($60.00). The direct and indirect examiner cost for time required to conduct the examination.

(b) Calculation of a day. A day is measured as eight business hours spent on site conducting an examination.

(c) Due date. An examination fee is due upon delivery of the examination bill following the conclusion of an examination.

(d) Return examinations. If a follow-up examination visit is required within ninety days after a written deficiency report given as a result of a failure to comply with Chapter 342 of the Texas Finance Code, this chapter, or the special instruction section of the examination

report, the return examination will be assessed at two times the rates provided in subsection (a)(3) of this 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 18, 2000.

TRD-200005851
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§1.1301 - 1.1308

The Finance Commission of Texas (the commission) adopts new §§1.1301 - 1.1308, concerning model provisions for motor vehicle installment sales contracts. New §§1.1301 - 1.1308 proposes clauses and disclosures for motor vehicle installment sales contracts. The new rules are adopted with non-substantive changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6251).

The agency received two comments from the Texas Automobile Dealers Association in support of the proposal.

Section 1.1301 states the purpose of the rules which is promote compliance with the requirements of the Texas Finance Code, Chapter 348 by creditors. The establishment of model disclosure and contract provisions for motor vehicle installment sale transactions will encourage use of simplified terminology and similarity of approach to some of the provisions that are often included in these contracts and will ultimately benefit consumers by making these contracts easier to understand. The use of the model clauses by creditors is not mandatory. The model clauses provide creditors examples of how to comply with such legal requirements as may be applicable to particular transactions, and use of these clauses may offer creditors the protections of Texas Finance Code § 349.101. However, creditors have considerable flexibility in making many of the disclosures addressed by the model clauses. The model clauses do not limit that flexibility.

Section 1.1302 discusses the relationship of federal law with the Texas statutory requirements for motor vehicle installment sales. The section is necessary to advise creditors on how the agency will review compliance with the federal law in satisfying certain state requirements and how to resolve any inconsistencies or conflicts between state and federal law.

Section 1.1303 defines terms commonly used in the statute or in motor vehicle installment sale transactions. By defining the terms in a rule, a creditor may use the defined term in a contract clause without having to completely restate the definition in the contract. For example, a creditor may contract to earn finance charges according to the true daily earnings method, as that term is defined by Finance Commission rule, without having to completely restate the actual definition of the true daily earnings method in the contract itself. Using standard definitions should aid in the simplification of these type of contracts and make them easier for consumers to understand, as well as ensuring uniform application of the law to these transactions.

Section 1.304 describes disclosures and contract provisions that are required by the Texas Finance Code. The rule applies and interprets Chapter 348 provisions that require specific disclosures or provisions that must be included in a motor vehicle installment transaction. The rule is necessary to assist sellers in appropriately making the required disclosures required under Texas law.

Section 1.1305 prescribes other disclosures that are required by Finance Commission rule, namely a consumer notice that identifies the state agency that the consumer may contact relative to complaints and a contract provision that identifies the method of earning finance charge that will be employed in the contract. The consumer notice is necessary so that consumers are advised how to contact the appropriate regulatory agency with a complaint. This notice is also required by §1.901 of this title. A provision contracting for the method of earning finance charges is added to adequately describe how finance charges are earned and to determine how prepayments on a contract and any associated refunding are handled. Since Chapter 348 allows different methods to be employed, the rule provides that the seller and buyer agree on a particular method. This provision will determine the application of payments, accrued finance charges, and late payment charges, if permissible.

Section 1.1306 discusses other contract provisions. These are provisions that are commonly used in motor vehicle installment transactions.

Section 1.1307 offers model clauses for use in motor vehicle installment sale transactions. These clauses merely state an acceptable method for contracting for or disclosing a particular provision. These model clauses are designed for encouraging compliance through the use of simplified clauses and uniform language. Again, use of the clauses is optional.

Section 1.1308 describes ways in which the model clauses may be amended and still maintain eligibility for the affirmative defenses or relief from liability in litigation as described in §3491.101.

The new sections are adopted under the Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §14.108 grants the Consumer Credit Commissioner and the Finance Commission the authority to interpret the provisions of Title 4, Subtitle B, in which Chapter 348 is located.

These rules affect Chapter 348, Texas Finance Code. The effective date of these rules is October 1, 2000.

§1.1301. Purpose.

(a) The purpose of these rules is to promote compliance with the requirements of the Texas Finance Code, Chapter 348 by creditors. The establishment of model provisions for these transactions will encourage use of simplified terminology and similarity of approach to some of the provisions that are often included in motor vehicle retail installment contracts and will ultimately benefit consumers by making these contracts easier to understand. The use of the model clauses by creditors is not mandatory. The model clauses provide creditors examples of how to comply with such legal requirements as may be applicable to particular transactions, and use of these clauses offers creditors who conform in good faith with the applicable rules the protections

of Texas Finance Code §349.101. However, creditors have considerable flexibility in making many of the disclosures addressed by the model clauses. The model clauses do not limit that flexibility. Many approaches that differ from the model clauses may also satisfy applicable legal requirements. A creditor's decision not to adopt a particular model clause is not evidence of a failure to satisfy any applicable legal requirements or prohibitions.

(b) The provisions are not intended to constitute a complete motor vehicle installment sale contract because these provisions specifically address only certain credit issues. They do not address other issues that may be legally permissible and desired by a party to the contract. Inclusion of such additional provisions is anticipated, and their omission from the model clauses is not evidence that they are prohibited by law.

§1.1302. Relationship with Federal Law.

(a) The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. §1601 *et seq*.) and specifically 12 C.F.R. §226.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions, as more fully provided in the Truth in Lending Act and federal Regulation Z.

(b) In the event of any inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency.

(c) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this regulation, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.

(d) The term "amount financed" may be substituted for "principal balance" whenever the amount financed, computed in accordance with federal Regulation Z, is the same as the principal balance computed in accordance with the Texas Finance Code.

(e) The term "annual percentage rate" may be substituted for "annual rate" or "contract rate" whenever the annual percentage rate, computed in accordance with federal Regulation Z, is the same as the annual rate computed in accordance with the Texas Finance Code.

§1.1303. Definitions.

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

(1) Accrual method or Scheduled installment earnings method--The scheduled installment earning method, or the accrual method, is a method to compute a finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this subsection, the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The accrual method or scheduled installment earnings method may be used with either an Irregular Payment Contract or a Regular Payment Contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(2) Creditor The seller or any subsequent holder or assignee of the retail installment contract.

(3) Daily Rate The rate authorized under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104, computed on a daily basis using a 365 day calendar year.

(4) Irregular Payment Contract A contract:

(A) That is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) The first scheduled installment of which is due later than 1 month and 15 days after the date of the contract.

(5) Regular Payment Contract Any contract that is not an irregular payment contract.

(6) Seller The seller of the motor vehicle.

(7) Sum of periodic balances method (Rule of 78s)--

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than $150 for a heavy commercial vehicle, or $25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract,

one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.

(C) The creditor is not required to give a finance charge refund if it would be less than $1.00.

(D) These methods may not be used with an irregular payment contract.

(8) True daily earnings method The truly daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. No late charges may be assessed under this method. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

§1.1304. Disclosures and Contract Provisions Required by the Texas Finance Code.

The contract shall have the following disclosures and provisions, as applicable:

(1) The consumer warning required by Texas Finance Code §348.102(d).

(2) The cash price as required by Texas Finance Code §348.102(a)(5). The cash price may be disclosed as a separate item in the Itemization of Amount Financed or elsewhere in the contract. The cash price is the price at which the seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction.

(3) The amount of any downpayment, specifying the amounts paid in money and in goods traded in, as required by §348.102. An amount paid by the seller under Texas Finance Code §348.404 to retire an amount owed (including amounts owed under a vehicle lease) against a motor vehicle used as a trade-in ("payoff") may be disclosed in several ways. The approaches outlined in the Regulation Z Staff Commentary, as from time to time updated, are permissible.

(4) Itemized charges not included in cash price, as required by Texas Finance Code §348.102. Itemized charges may include, but are not limited to, the following charges as applicable:

(A) State inspection fee;

(B) Documentary fee;

(C) Dealer's inventory tax;

(D) Sales tax;

(E) Other taxes not included in the cash price (the seller may disclose one aggregate amount for all taxes or may separately itemize one or more of the taxes);

(F) Deputy service fee;

(G) Title fee;

(H) License fee;

(I) Vehicle property insurance;

(J) Credit life and credit disability insurance;

(K) GAP insurance, as authorized by Texas Finance Code §348.208(b)(4);

(L) Theft protection plan;

(M) Service contract; or

(N) Warranty contract.

(5) The insurance statement required by Texas Finance Code §348.204.

(6) Notice of exclusion of bodily injury and property damage insurance, if excluded, as required by Texas Finance Code §348.205.

(7) Any documentary fee charged must be separately disclosed, either in the itemization or elsewhere, along with the description required by Texas Finance Code §348.006 in reasonable proximity to the disclosure of the documentary fee. Any foreign language translation of this disclosure that is required under Texas Finance Code §348.006 may be given in a separate document.

(8) A disclosure that the buyer may refinance the final scheduled payment upon the terms previously agreed or for any other period of time and payment schedule to which the buyer and holder may agree for a contract described in Texas Finance Code §348.123(b)(5).

§1.1305. Other Disclosures Required by Commission Rule.

(a) The consumer credit commissioner notice required by §1.901 of this title (relating to Consumer Notifications) must be disclosed.

(b) In a contract using the true daily earnings method, a brief description of the method of earning finance charge must be given. In a contract using the accrual method or the sum of the periodic balances method of refunding precomputed finance charges, the name of the method used, and at the creditor's option, a description of that method. If in the same contract form, the creditor uses the accrual method in certain circumstances and the sum of the periodic balances method in other circumstances, the creditor shall provide a brief description of the circumstances under which each method will be used, along with the name of the method.

§1.1306. Other Contract Provisions.

A motor vehicle installment sale contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation:

(1) Disclaimer of implied warranties as provided in the Business and Commerce Code.

(2) A promise to pay the buyer's obligations under contract.

(3) An agreement to keep the vehicle free of liens and encumbrances.

(4) An agreement to repay the creditor for any amounts paid to satisfy liens or encumbrances on any trade-in.

(5) An agreement to keep the vehicle in good working order and repair.

(6) An agreement regarding the buyer's use of the vehicle.

(7) An agreement prohibiting the unauthorized transfer of an interest in the collateral.

(8) An agreement not to expose the vehicle to seizure, confiscation, or other involuntary transfer.

(9) Other agreements identifying other events of default.

(10) An agreement regarding the consequences of default, including but not limited to, an agreement permitting acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Business and Commerce Code, §1.208.

(11) An agreement granting a security interest in collateral, including but not limited to, the motor vehicle, accessions to the motor vehicle, any insurance, service contracts, or warranties financed under the contract, and any proceeds thereof.

(12) An agreement requiring the buyer to insure the vehicle against loss or damage.

(13) An agreement authorizing the creditor to purchase insurance against loss or damage to the vehicle if the buyer fails to do so, and to charge the premium paid by the creditor for such insurance to the buyer plus an additional charge at a rate no more than the annual percentage rate of the contract.

(14) An agreement to allow the creditor to apply charges returned to the creditor for canceled insurance, service contracts, and warranties to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(15) A description of any right or remedy of either the creditor or the buyer, including but not limited to, a description of the creditor's rights relating to default and repossession of the collateral, the buyer's right to redeem, and the buyer's right to refinance a balloon payment.

(16) A provision providing for interest on any matured installment at any rate permitted by law.

(17) A buyer's acknowledgment of receipt of the retail installment contract as permitted under Texas Finance Code §348.112.

(18) An assignment of the contract to a third party. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code §348.301.

(19) In the case of a vehicle subject to 16 C.F.R.§455.1 *et seq*., the notice provided for therein.

(20) Provisions regarding change of address, removal of the vehicle from the jurisdiction, and similar provisions.

(21) Savings clauses.

(22) An integration clause, providing that the contract supersedes prior agreements and statements.

(23) A waiver of any right to receive notice of the intent to accelerate or notice of acceleration.

(24) A provision stating Texas and federal law will apply to the contract.

§1.1307. Model Clauses.

(a) Generally.

(1) The model clauses refer to the buyer and co-buyer as "you," or "buyer or "co-buyer." The seller is referred to as "seller, "creditor, "we" or "us."

(2) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the buyer than those that would result from the use of a model clause.

(3) A retail installment contract need not be contained in a single document.

(b) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) For contracts using the sum of the periodic balances (Rule of 78s) or the accrual method or a permissible combination of the methods. The notice may read: "Notice to the Buyer-Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law, you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this contract to protect your legal rights."

(2) For contracts using the true daily earnings method. The bracketed portion of the notice may be included at the creditor's option. The notice may read: "Notice to the Buyer- Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to a copy of the contract you sign. Under the law you have the right to pay off in advance the full amount due (and under certain conditions save a portion of the finance charge). Keep this contract to protect your legal rights."

(c) Buyer's acknowledgment of contract receipt. The following acknowledgment conforms to the requirements of Texas Finance Code §348.112 if it appears directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) If the buyer's signature is dated. If the bracketed clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model clause reads as follows: "You agree to the terms of this contract and received a completed copy when you signed it (or a copy will be mailed to you)."

(2) If the buyer's signature is not dated. If the second option is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read as follow: "You agree to the terms of this contract and received a completed copy on _____. (Mo.) (Day) (Yr.)" or "You signed this contract on _____ and a copy will be mailed to you."

(d) True daily earnings contract clauses.

(1) Method of computing earned finance charge.

(A) Description of Method. The following clause is sufficient to explain the method for earning finance charges: "We figured the Finance Charge using the daily rate on the unpaid principal balance."

(B) Prepayment. The following clause is sufficient to explain the buyer's prepayment rights: "If you pay off all your debt early, you will not have to pay a penalty."

(2) Optional Additional Description of Method. The creditor has the option to add the following additional explanations:

(A) Application of Payments. The model clause reads as follows: "We will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid balance owed under this contract."

(B) Calculation of daily rate. The model clause reads as follows: "The daily rate is 1/365th of the equivalent contract rate."

(C) Effect of early and late payments. The model clause reads as follows: "We based the Finance Charge, Total of Payments, and Total Sale Price on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment."

(3) Model clause for late charges. The following sufficiently discloses the late charge for contracts using the true daily earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure may be completed with a rate permissible under Texas Finance Code §§303.201 or 303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code 348.104. If the late charge rate is the same as the annual percentage rate, no disclosure is required. The model clause reads as follows: "Late Charge. If a payment is not received in full on its due date, you will pay interest on the amount of the payment that is late at the rate of __% per annum."

(e) Contracts using the sum of periodic balances method, or the accrual method or a permissible combination of these methods.

(1) Refund upon prepayment. The following clause is sufficient to explain the buyer's right to a finance charge refund upon prepayment in full of the buyer's contract obligations. The model clause reads as follows: "You may prepay all of your debt and get a refund of part of the Finance Charge."

(2) Refund upon acceleration. The following clause is sufficient to explain the buyer's right to a finance charge refund upon acceleration of the contract: "If the creditor demands that you pay all you owe on this contract at once, the creditor will give you a credit of part of the Finance Charge as if you had prepaid in full."

(3) Contracts using the sum of the periodic balances method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding finance charge: "We will figure the Finance Charge refund by the sum of the periodic balances method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method. The creditor may insert any amount up to $25 (or up to $150 for a heavy commercial vehicle) at the location indicated by the first set of brackets. The words in the second and third bracketed portions are optional. The model clause reads as follows: "We will figure your refund by first subtracting (insert an amount not exceeding $25)((insert an amount not exceeding $150) if you are buying a heavy commercial vehicle) from the Finance Charge. Then we will multiply the difference by the refund percentage. We will figure the refund percentage by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) You will not get a refund if the refund would be less than $1.00."

(C) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The words in the first bracketed portion are optional. The creditor may insert any amount up to $150 at the location indicated by the second set of brackets. The model clause reads as follows: "We will figure your refund by dividing the sum of the unpaid monthly balances in the payment schedule by the sum of all of the monthly balances in the payment schedule. (We will figure the sum of the unpaid monthly balances based on the due date of the next scheduled payment after you prepay, unless you prepay before the date the first scheduled payment is due. If you prepay before the date the first scheduled payment is due, we will figure the sum of the unpaid monthly balances based on the due date of the second scheduled payment.) From the result of that multiplication, we will then subtract (creditor insert an amount not exceeding $150). You will not get a refund if the refund would be less than $1.00."

(4) Contracts using the accrual method.

(A) Name of the method. The following clause is sufficient to identify the method of refunding the finance charge: "We will figure the Finance Charge refund by the accrual method as defined by the Finance Commission of Texas rule."

(B) Optional description of the method. The creditor may include the following additional description of the method: "We will figure your refund by deducting earned finance charges from the Finance Charge. We will figure earned finance charges by applying a daily rate to the unpaid principal balance as if you paid all your payments on the date due. If you prepay between payment due dates, we will figure earned finance charges for the partial payment period. We will do this by counting the number of days from the due date of the prior payment through the date you prepay. We will then multiply that number of days times the daily rate. The daily rate will be the annual rate divided by 365. We will also add (an amount not exceeding $25)) ((an amount not exceeding $150) if you are buying a heavy commercial vehicle) to the earned finance charge. You will not get a refund if the refund would be less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "The creditor will figure the Finance Charge refund using the applicable method described below. We will figure the finance charge rebate using the sum of the periodic balances method as defined by the Finance Commission of Texas rule if two things are true. First, this contract must have a regular payment schedule. Second, it must not have a term greater than 61 months. A regular payment schedule is one with substantially equal monthly payments and a first scheduled payment due no later than one month plus 15 days from the date of this contract. If this contract does not have a regular payment schedule or if it has a term greater than 61 months, we will figure the Finance Charge refund using the accrual method as defined by the Finance Commission of Texas rule. You will not get a refund if the refund would be less than $1.00."

(5) Model clause for late charges. The following sufficiently discloses the late charge for contracts using the sum of the periodic balances method or accrual earnings method so long as the blanks are completed so as to result in a late charge that does not exceed that permitted by law. The blank in this disclosure should be completed with a rate permissible under Texas Finance Code §303.201 or

§303.202 or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104. The model clause reads as follows: "Late Charge. If a payment is not received in full within 15 days after it is due (10 days if you are buying a heavy commercial vehicle), you will pay a late charge of:

(A) __% of the part of the payment that is late.

(B) Interest on the part of the payment that is late at the rate of _____% per annum."

(f) Required physical damage insurance.
Figure: 7 TAC §1.1307(f).

(g) Optional insurance coverages.
Figure 1: 7 TAC §1.1307(g)
Figure 2: 7 TAC §1.1307(g)

(h) Right to Refinance.

(1) Right to refinance balloon payment contracts. The following is sufficient to describe a buyer's right to refinance a balloon installment under Texas Finance Code §348.123(a), when applicable: "A balloon payment is a scheduled payment that is more than twice the average of your earlier scheduled payments. If you are purchasing the vehicle primarily for personal, family or household use, you have the right to refinance the amount of a balloon payment when it is due without being charged a refinancing fee. If you refinance a balloon payment, you have the right to enter into a new written agreement with a payment schedule with periodic payments that are not larger or more frequent than the average amount or frequency of your earlier scheduled payments. The annual percentage rate on the new written agreement will not exceed the Annual Percentage Rate of this contract. This provision does not apply if your payment schedule has been adjusted to your seasonal or irregular income."

(2) Special right to refinance where creditor offers to repurchase the vehicle for the scheduled balloon amount. The following is sufficient to describe the buyer's right to refinance in a transaction that is referred to in Texas Finance Code §348.123(b)(5): "If you are not in default, you may enter into a new written agreement with us to refinance the last installment. You have the right to refinance at an annual percentage rate that does not exceed the annual percentage rate shown on the front of this contract plus 5 percentage points. The rate will not exceed the maximum lawful rate applicable to the refinancing. You have the right to refinance the last installment for at least 24 months with equal monthly payments. You and we may also agree to refinance the last installment over another time period or on a different payment schedule."

(i) Model clause for liability insurance. If liability insurance coverage is not included in the contract, either of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous: "Any insurance referred to in this contract does not include coverage for personal liability and property damage caused to others." Or "Liability insurance coverage for bodily injury and property damage caused to others is not included in this contract." Or "Unless a charge for liability insurance is included in the Itemization of Amount Financed, (liability insurance coverage for bodily injury and property damage caused to others is not included in this contract) or (any insurance referred to in this contract does not include coverage for personal liability and property damage caused to others.)"

(j) Model clause for agreement to keep vehicle insured.

(1) Agreement to keep vehicle insured. The model clause reads as follows: "You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle."

(2) Agreement to allow creditor to purchase required insurance if buyer fails to keep the vehicle insured. The model clause reads as follows: "If you fail to provide us reasonable evidence that you have this insurance, we may, if we decide, buy physical damage insurance. If we decide to buy this insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. The amount you must pay will be the premium for the insurance and a finance charge at the Annual Percentage Rate shown on this contract."

(k) Model clause for consumer credit commissioner notice. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title (relating to Consumer Notifications). The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Phone 800-538-1579; 512/936-7600, and can be contacted relative to any inquiries or complaints."

(l) Model clause for documentary fee.

(1) The following notice satisfies the requirements of Texas Finance Code §348.006 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The bracketed insert may be inserted at the dealer's option or the disclosure may be made without the bracketed portion if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(2) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code §348.006. The bracketed insert may be inserted at the dealer's option or the disclosure may be made without the bracketed portion if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario official. Un honorario de documentacin no es requerido por la ley, pero puede ser cargada al comparador como gastos de manojo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehiculo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero ,ste podria cobrarse

a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehiculo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificación se exige por ley."

(m) Model clause for grant of a security interest. The following are samples of permissible descriptions of a security interest granted in a typical motor vehicle installment sale. The model clause reads as follows: "You give us a security interest in: 1. The vehicle and all parts or goods now or later attached to it; and 2. all insurance or service contracts we finance for you and any refunds of charges for them. This secures payment of all amounts you at any time owe on this contract. You agree to have the certificate of title show our security interest in the vehicle." Or "You give us a security interest in: 1. The vehicle and all parts or goods installed in it; 2. All money or goods received (proceeds) for the vehicle; 3. All insurance or service contracts the creditor finances for you; and 4. All proceeds from insurance or service contracts we finance for you (this includes any refunds of premiums). This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You agree to have the certificate of title show our security interest (lien) in the vehicle."

(n) Model clauses for default rights and repossession provisions. The following provisions are samples of permissible descriptions of some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(1) Acceleration and default. The model clause reads as follows: "If you default on any of your obligations in this contract or if we in good faith believe the prospect of payment or performance of this contract is impaired, we may demand that you pay all you owe on this contract at once." Or "If you break any of your promises (default) or if we in good faith believe the prospect of payment or performance of this contract is impaired, we may demand that you pay all you owe on this contract at once. Default means: 1. You do not pay any payment on time; 2. You start a proceeding in bankruptcy or one is started against you or your property; or 3. You break any agreements in this contract."

(2) Collection costs. The model clause reads as follows: "If we hire an attorney who is not our salaried employee to collect what you owe, you will pay any reasonable attorney's fee and court costs, as the law allows."

(3) Repossession. The model clause reads as follows: "If you default, we may take (repossess) the vehicle from you if we do so peacefully. Any accessories, equipment or replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you and will give you written notice at your last address shown on our records within 15 days of discovering that we have such items. If you do not ask for these items back within 31 days from the notice, we may dispose of them as the law allows."

(4) Buyer's right to redeem. The model clause reads as follows: "If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle."

(5) Disposition of collateral. The model clause reads as follows: "If you do not redeem, we may sell the vehicle. We will send you written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to any amount you owe under this contract. If any money is left (surplus), we will pay it to you. If the money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the highest lawful rate until you pay." Or "If you do not redeem, we will (may) sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left over (surplus), we will pay it to you. If the money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at the highest lawful rate until you pay."

(6) Cancellation of optional insurance or service contracts. The model clause reads as follows: "This contract may contain charges for optional insurance or service contracts. If you default, you agree that we may claim benefits under these contracts, to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle."

(o) Warranty Disclaimer. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Section 3 of the Business and Commerce Code: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide."

(p) Promise to Pay. The following is an appropriate description of a buyer's obligation to pay: "By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the creditor the Amount Financed and Finance Charge according to the payment schedule shown in this contract."

(q) Other Agreements regarding the use, encumbrance, and transfer of the vehicle. The contract may obligate the buyer to keep the vehicle free of liens and encumbrances, require the buyer to keep the vehicle in good working order and repair, prohibit the buyer from transferring any interest in the vehicle without the creditor's written permission, and prohibit the buyer from allowing the vehicle to be exposed to seizure, confiscation, or other involuntary transfer. For example, the following is permissible: "You agree not to remove the vehicle from the U.S., or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it."

(r) Returned Insurance Premiums and Service Contract Charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(1) The following is permissible for contracts using the true daily earnings method: "If we obtain a refund on insurance or service contracts, we will subtract the refund from what you owe.

(2) For contracts using the accrual or sum of the periodic balances method, the creditor may substitute the following: "If we obtain a refund of insurance or service contract charges, we will apply the refund and the unearned finance charges on the refund to as many of your payments as they will cover beginning with the final (next) payment. We will tell you of what we do."

(s) Integration Clause. The contract may include an integration clause indicating that the parties to the contract intend it to be final

written expression their agreement, such as: "This contract contains the entire agreement between you and us relating to this contract."

(t) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The following prohibition on oral modifications is permissible: "Any change to this contract must be in writing, and both you and we must sign it. No oral changes to this contract are binding."

(u) Severability. The contract may include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The following clause is permissible: "If any part of this contract is not valid, all other parts stay valid."

(v) No waiver of creditor's rights. A clause such as the following is permissible to prevent a creditor's delay in enforcing rights under the contract from effecting a waiver of those rights: "We may delay or refrain from enforcing any of our rights under this contract without losing them."

(w) Waiver of Notice of Intent to Accelerate and Notice of Acceleration. A clause such as the following is permissible to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both: "You give up (waive) your common law rights to receive notice of intent to accelerate and notice of acceleration. This means that you give up the right to receive notice that we intend to demand that you pay all that you owe on this contract at once (accelerate) and notice that we have accelerated."

(x) Applicable law. A clause such as the following is permissible to establish the law that will apply to the contract: "Federal law and Texas law apply to this contract."

§1.1308. Permissible Changes.

Creditors may make the following types of changes to the model clauses and may still be eligible for the defenses provided by Texas Finance Code, §349.101:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) The deletion of inapplicable disclosures.

(3) Using a line for the consumer to initial, rather than a checkbox.

(4) Adding a signature line to the insurance disclosures to reflect joint policies.

(5) Substituting another term for "buyer", "seller" or "creditor" that has the same meaning, or use of pronouns such as "you", "we" and "us" or "it.

(6) The model clauses may be presented in any order, and may be combined or further segregated at the creditor's option.

(7) Inserting descriptive headings or number provisions.

(8) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(9) References to different provisions for heavy commercial vehicles may be omitted where the creditor elects to treat buyers of heavy commercial vehicles under the rules applicable to other vehicles.

(10) Other changes which do not affect the substance of the disclosures.

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 18, 2000.

TRD-200005852
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 936-7640

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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.3

The Finance Commission of Texas (the commission) adopts amendments to §4.3, concerning reporting and recordkeeping for currency transmission activities. The section is adopted without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6265), and the text will not be republished.

The amendment to §4.3(e)(2)(A) permits a licensee to note in the transaction record that a customer, sender, or recipient does not have a telephone rather than requiring a telephone number to process the transaction, and expands the possible types of documents that can be used to verify identification. In addition, the amendment to §4.3(e)(2)(B) clarifies that the identity of the customer must be verified, but verification of the customer's name or address specifically is not the exclusive method of verification.

The commission received no comments regarding the proposal.

The section is adopted pursuant to Finance Code, §153.002(2), which authorizes the commission to adopt rules specifying the recordkeeping and reporting requirements applicable to a license holder.

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 18, 2000.

TRD-200005841
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 475-1300

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES

DIVISION 2. SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) adopts new §61.1012, concerning school finance, with changes to the proposed text as published in the April 7, 2000, issue of the *Texas Register* (25 TexReg 2898). The new section sets a maximum tuition charge for transfer students, as well as the maximum of tuition that can be applied to a property value adjustment, authorized under Texas Education Code (TEC), Chapter 25, as amended by Senate Bill (SB) 4, 76th Texas Legislature, 1999. The method for the calculation of the tuition limit is defined.

Under prior law, the amount of tuition was determined by local school boards without a specific methodology in rule or statute. The change in law allows the commissioner of education to set a ceiling for tuition. The primary purpose of that limit is to assure that the cost of educating transfer students under the Foundation School Program is approximately recognized in the district providing the educational services. Another result of the limit will be the reduction of duplicate funding that has historically occurred through tuition arrangements.

In response to comments, the following changes have been made to the section since published as proposed.

Language was added to subsection (b) regarding the limit calculation using the number of students enrolled in a district appropriately adjusted to account for students ineligible for the Foundation School Program funding and those eligible for half-day attendance.

Language was added to subsection (b)(5) regarding making allowances for debt service that has been paid with non-tax sources.

Language was added to subsection (c) clarifying the initial school year to which the section will apply and specifying the computation to be used to determine the maximum tuition amount.

The following comments were received regarding adoption of the new section.

Comment. The representatives of several districts opposed the new section. According to these representatives, some districts have acceptable, long- standing arrangements pertaining to tuition that benefit both partners. They expressed the opinion that the new section would significantly disrupt their relationships, as well as negatively impact the financial strength of one or both of the pair, and limit local control. A staff member of a state representative's office and two other individuals asked for a delay in the adoption of the new section, a hold harmless provision for current arrangements, and/or some transition mechanism. Others advocated that some allowance be made for the higher cost of high school transfers.

Agency Response. While the agency does not agree with all points raised, a modification to phase in the limits more gradually would be a reasonable change. The section has been modified to allow for a smoother transition.

Comment. An individual commented that the limit on tuition would be a signal for school districts that had previously set lower tuition rates to raise those rates to the maximum allowed under the rule, and that this behavior should be prohibited by the rule.

Agency Response. The agency disagrees. The absence of a limit in prior years has not resulted in higher tuition rates. The imposition of a limit, while calling attention to the issue of tuition rates, does not force districts to do anything other than what was already allowed under prior law and regulation. In addition, any changes in the level of tuition would result in further property value adjustment for the paying district that should largely offset any additional cost.

Comment. Two individuals, including a representative of the Texas Association of Rural Schools, spoke in favor of the new section. Their opinion was that the tuition limit would serve as a safeguard to prevent districts from charging exorbitant tuition amounts.

Agency Response. The agency agrees with the comments and believes that the rule accurately reflects the statute, as well as legislative intent.

Comment. A private consultant suggested that "membership" be used instead of "enrollment" in the limit calculation. This would more appropriately take into account students who attend on a half-day basis. He also suggested that the calculation make allowances for debt service that has been paid with non-tax sources.

Agency Response. The rule agrees with the suggestions and has modified the section.

The new section is adopted under the Texas Education Code, §25.039, as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules that specify the amount of tuition that can be charged for the education of students transferring outside the school district and apply that limitation to a property value adjustment.

§61.1012. Contracts and Tuition for Education Outside District.

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

(1) Home district--District of residence of a transferring student.

(2) Receiving district--District to which a student is transferring for the purpose of obtaining an education.

(3) Tuition--Amount charged to the home district by the receiving district to educate the transfer student.

(b) Tuition charge for transfer students. Tuition charged to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. The calculation will utilize the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year. For purposes of this section, the number of students enrolled in a district will be appropriately adjusted to account for students ineligible for the Foundation School Program funding and those eligible for half-day attendance.

(1) Excess maintenance and operations (M&O) revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with Texas Education Code (TEC), Chapter 42, Subchapters B, C, and F, plus M&O tax collections, with the sum divided by enrollment, less the state aid gained by the addition of one transfer student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in TEC, Chapter 46, Subchapter A.

(A) The data for this calculation are derived from the Public Education Information Management System (PEIMS) fall data submission (budgeted M&O tax collections and student enrollment)

and the Legislative Payment Estimate (LPE) data (Foundation School Program (FSP) student counts and property value).

(B) The state aid gained by the receiving district from the addition of one transfer student is computed by the commissioner of education. The calculation assumes that the transfer student participates in the special programs at the average rate of other students in the receiving district.

(2) Excess debt revenue per enrollee. A district's excess debt revenue per enrollee is defined as Interest and Sinking Fund (I&S) taxes budgeted to be collected that surpass the taxes equalized by the IFA pursuant to TEC, Chapter 46, Subchapter A, and the Existing Debt Allotment (EDA) pursuant to TEC, Chapter 46, Subchapter B, divided by enrollment.

(A) The local share of the IFA for bonds and the local share of the EDA are subtracted from debt taxes budgeted to be collected as reported through PEIMS.

(B) The estimate of enrollment includes transfer students.

(3) Base tuition limit. The base tuition limit per transfer student for the receiving district is a percentage of its state and local entitlement per enrollee from both tiers of the FSP. The entitlement includes the Texas Education Agency's estimate for the current year for the total of allotments in accordance with TEC, Chapter 42, Subchapters B and C, plus the state and local shares of the guaranteed yield allotment (GYA) in accordance with TEC, Subchapter F.

(A) For this purpose, the GYA is calculated as the product of the elements guaranteed leave (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally by 100. All applicable limits for DTR apply to the calculation as specified in §105.1011 of this title (relating to Distribution of Foundation School Fund), and GL is limited as directed in TEC, §42.152(t).

(B) The applicable proportions of the entitlement are 20% in the 2000-2001 school year, 15% in the 2001-2002 school year, and 10% in the 2002-2003 school year and beyond.

(4) Calculated tuition limit. The calculated tuition limit is the sum of the excess M&O revenue per enrollee, the excess debt revenue per enrollee, and the base tuition limit, as calculated in subsections (b)(1), (b)(2), and (b)(3) of this section, respectively.

(5) Notification and appeal process. In the spring of each school year, the commissioner will provide each district with its calculated tuition limit and a worksheet with a description of the derivation process. A district may appeal to the commissioner if it can provide evidence that the use of projected student counts from the LPE in making the calculation is so inaccurate as to result in an inappropriately low authorized tuition charge and undue financial hardship. A district that used significant non-tax sources to make any of its debt service payments during the base year for the computation may appeal to the commissioner to use projections of its tax collections for the year for which the tuition limit will apply. The commissioner's decision regarding an appeal is final.

(c) Maximum tuition amount in property value adjustment. For the 2000-2001 school year, the maximum amount of tuition that can be applied to the property value adjustment for school districts offering fewer than all grade levels in accordance with TEC, §42.106, may not exceed the greater of the amount per student computed in subsection (b)(4) of this section or the amount per student actually paid during the 1999-2000 school year if both districts adopt a written agreement specifying a rate that exceeds the computation in subsection (b)(4) of this section. Tuition may not exceed the rate paid in the 1999-2000 school year. For subsequent years, the maximum amount is limited to the amount per student computed in subsection (b)(4) of this 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 18, 2000.

TRD-200005867
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 7, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 463-9701

CHAPTER 75. CURRICULUM
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING SPECIAL PROVISIONS FOR CAREER AND TECHNOLOGY EDUCATION

19 TAC §§75.1031 - 75.1034

The Texas Education Agency (TEA) adopts new §§75.1031-75.1034, concerning voluntary workforce training for secondary students, without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6274) and will not be republished. The new sections provide a mechanism for program participants and employers to enter into postsecondary education agreements and establish trust funds to be applied toward the participant's postsecondary education. The adopted new sections incorporate provisions in the Texas Labor Code, Chapter 311, Voluntary Workforce Training for Certain Students.

The Texas Labor Code, Chapter 311, added by House Bill 2401, 76th Texas Legislature, 1999, establishes voluntary workforce training programs for secondary students. The programs are similar to current work-based training programs, but require program certification by the TEA. Texas Labor Code, §311.004, requires TEA and the Texas Workforce Commission (TWC) to adopt rules to administer each entity's responsibilities related to the new statutorily-created Voluntary Workforce Training for Certain Students. The adopted new sections were developed by a joint committee comprised of representatives from TEA, TWC, the Texas Attorney General's Office, legislative staff, and representatives from business and industry.

No comments were received regarding the adoption of the new sections; however, TEA staff described the voluntary workforce training program and the new sections during presentations at six statewide professional development conferences that coincided with the public comment period. The comments received during the presentations were not related to the new sections but were questions specifically related to the implementation of the program. The questions did not constitute any changes to the new sections as proposed. The following are the questions and the agency responses.

Comment. Can anyone establish a trust fund?

Agency Response. There is nothing in the law that would prevent a school district or employer from setting up a trust fund for a student who is not participating in a voluntary workforce training program (VWTP). Only students who are participating in a VWTP are eligible to participate in a trust fund set up for that purpose.

Comment. Can work-based learning (WBL) students and VWTP students be in the same class?

Agency Response. Yes, they can be in the same class. However, if an employer is the sponsor, it is possible that the student may not be enrolled in a class that is directly linked to the VWTP.

Comment. How is business finding out about this program?

Agency Response. The Texas Workforce Commission and local workforce development boards are providing information and technical assistance to employers and other entities that wish to implement the program.

Comment. Is the trust fund reported on the financial aid report?

Agency Response. The TEA is investigating that question.

Comment. What if the employer or the student wants to dissolve the trust fund? If it is dissolved, what is reimbursed to the employer and student?

Agency Response. The trust fund can be dissolved at any time by mutual agreement. The employer and student both recover all the funds that they invested in the trust fund, plus interest.

Comment. What does an employer gain from this program?

Agency Response. The employer could gain qualified workers.

Comment. Is there a tax credit for the employer participating in this program?

Agency Response. There is not a tax credit for the employer at this time.

Comment. If a school does not want to be the sponsor, can the student still get high school credit for the program?

Agency Response. The student can receive academic credit for classes he or she is participating in. No extra credit will be given for work-based training.

Comment. Can the student or the employer invest more than one-half of the salary and if so, does it have to be matched by the other participant?

Agency Response. The legislation specifies that one-half of the students' salary may be contributed to the trust fund, and that the employer will match the contribution.

Comment. Who pays for the establishment of the trust fund?

Agency Response. If there is a cost, responsibility for payment will be mutually determined by the employer and participant.

Comment. Can students who are 16 to 17 years old be held accountable for this contract?

Agency Response. A participant who is 16 or 17 years old cannot by law be held accountable for a contract. The agreement will be signed by the participant, the sponsor, the employer, and a parent or guardian of the participant if the participant is under 18 years of age. Comment. Why would the school district want to be a part of this program when they already have work-based learning programs?

Agency Response. The program provides an option for students to earn more income for postsecondary education, and provides an incentive to establish a long-term employment relationship between the student participant and employer.

Comment. May the student continue to work for the employer while attending post-secondary school and thus fulfill the requirement to work for the employer for two years?

Agency Response. The law specifies that the student must agree to work for the employer for at least two years immediately following the date the participant completes postsecondary education.

Comment. May the student continue to work for the employer while attending post-secondary school and continue to invest in the trust fund?

Agency Response. That will be determined between participant and employer, and should be specified in the trust fund agreement.

Comment. Who pays the taxes on the trust fund?

Agency Response. The participant would pay taxes on his or her earnings. The TEA is investigating the tax implications for the employer.

Comment. Can the student use the money in the trust fund for living expenses, or must it be spent on tuition, textbooks, etc.?

Agency Response. The law specifies that the fund will be applied toward the student's postsecondary education. To avoid disputes over what that means, the employer and student should specify in the trust fund agreement how the funds may be spent.

The new sections are adopted under the Texas Labor Code, §311.004, as added by House Bill 2401, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to administer its responsibilities related to the Voluntary workforce Training for Students 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 18, 2000.

TRD-200005866
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 7, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 463-9701

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

19 TAC §105.1014

The Texas Education Agency (TEA) adopts new §105.1014, concerning state aid entitlements, with changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6022). The new section describes the actions that

will be taken by the TEA to provide supplemental state assistance to school districts that have a decline in taxable property values resulting from electric utility restructuring. Under Texas Utilities Code, §39.901, school districts would be held harmless for the effects that electric utility restructuring might have on the ability of the districts to generate local revenue.

Senate Bill 7, 76th Texas Legislature, 1999, enacted major changes to the marketplace of electric power that, in turn, will impact the taxable value of electric generating facilities. The bill authorized fees to be collected from utilities and created a fund that would receive those fees. The fee receipts would be used to offset additional state expenses in the Foundation School Program that can be attributed to declines in property values from a prior year to the current year. The state expenses would result from higher state aid requirements under Texas Education Code, Chapters 42 and 46, or reduced recapture receipts under Texas Education Code, Chapter 41. In addition, any loss of revenue incurred by school districts that would not be made up by additional state aid or reduced recapture requirements would be paid to the districts from funds transferred to the TEA. The funds to provide for the relief for school funding are to be derived from a fee adopted by the Public Utilities Commission (PUC) under separate authority. The fees, if levied by the PUC, are appropriated for the purposes described in the adopted new section. The adopted new section governs only the distribution of revenue received from the system benefit fund. The actual fee to be collected is determined by the PUC.

In response to comments, the following changes have been made to the section since published as proposed.

Language was modified in subsection (a) to establish April 1 instead of May 1 as the date by when the commissioner of education shall provide notification to the PUC of the effects on the difference in property values as determined by the comptroller of public accounts.

Subsections (b), (c), and (d) relating to computing the effects of electric utility restructuring were deleted since these subsections would not affect the 2000-2001 school year computations and the language can be revised and brought forward at a later date.

Language was modified in subsection (e) and retained it as new subsection (b) to clarify the process that will be used to adjust current year funding of a school district that experiences a decline in property value from prior year to current year.

A new subsection (c) was added relating to the provision of public input.

A new subsection (d) was added to specify that the section applies to the 2000-2001 school year and expires on August 31, 2001.

The following comments were received regarding adoption of the new section.

Comment. The commissioners of the PUC commented that a deadline of May 1 of each year for reporting the TEA's calculation of funding would be too late to allow the PUC to transfer funds as required by statute. The PUC proposes an April 1 notification date.

Agency Response. The agency agrees with the suggestion and has modified the section.

Comment. The commissioners of the PUC commented that the rule contains no expiration date, although the statutory authorization expires August 31, 2007.

Agency Response. The agency agrees with the observation and has modified the section.

Comment. The commissioners of the PUC indicated that the language of subsections (b), (c), (d), and (e) could be misconstrued to mean that the TEA makes property value determinations independent of the comptroller of public accounts, and suggested that the wording be amended to properly reflect the comptroller's role.

Agency Response. The agency agrees with the observation and has modified the section.

Comment. The commissioners of the PUC pointed out that the authorizing legislation requires that rules adopted by the TEA provide for public input, and suggested that explicit provisions be incorporated into the rule.

Agency Response. The agency agrees with the observation and has modified the section.

The new section is adopted under the Texas Utilities Code, §39.901, as added by Senate Bill 7, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary for the implementation of a school funding loss mechanism.

§105.1014. Additional Assistance for Effects of Electric Utility Restructuring.

(a) Each year, the commissioner of education shall determine the effects on recaptured property taxes and local revenues from property value reductions caused by electric utility restructuring, as authorized under Texas Utilities Code, §39.901. The commissioner shall base the determination of the effects on the difference in property values as determined by the comptroller of public accounts for the current or preceding school year, as appropriate. The commissioner shall provide the determination to the Public Utility Commission no later than April 1 of each year.

(b) If for any year the comptroller of public accounts certifies that there is a decline in property values from prior year to current due to electric utility restructuring, the commissioner shall separately compute the additional state aid under Texas Education Code, Chapters 42 and 46, and the reduction in recapture under Texas Education Code, Chapter 41, by reducing the comptroller certified prior year property value by the amount of reduction caused by electric utility restructuring. For this purpose, the commissioner shall compute the amount of local taxes in the affected school year that would have been available had there been no restructuring. To determine the local taxes that would have been available, the commissioner shall adjust the budgeted tax collections for the current year proportionate to the ratio of the unadjusted prior year property values to the adjusted prior year property values. To determine whether the district is entitled to any supplemental payment for the decline in current year property values due to restructuring, the sum of state aid and local taxes net of any recapture payment shall be compared between the scenario using adjusted prior year property values and budgeted tax collections and the scenario using the unadjusted property values and adjusted tax collections. If the scenario using unadjusted property values produces more total revenue, the difference shall be paid in addition to any other state aid. The amount of funding needed to replace lost recapture funds due to the state shall be computed by comparing the amount of recapture owed under each scenario.

(c) The commissioner shall publish the findings under this section and appropriate worksheets for school districts on the Internet site of the Texas Education Agency (TEA) as soon as practicable for public review. Comments concerning the findings may be submitted in

writing to the TEA division responsible for state funding. The commissioner or his designee will annually hold a public hearing on a date after publication of the findings on the TEA Internet site at a time and place published in the *Texas Register*.

(d) This section applies to the 2000-2001 school year and expires on August 31, 2001.

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 18, 2000.

TRD-200005865
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 7, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER M. NONRESIDENTS

22 TAC §535.131, §535.132

The Texas Real Estate Commission (TREC) adopts an amendment to §535.131, concerning the splitting of fees with nonresident brokers, without changes to the proposed text as published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4688). The proposed amendment to §535.132, concerning a nonresident's eligibility for a Texas real estate broker or salesperson license, was adopted with a nonsubstantive change to the proposed text.

The amendment to §535.131 rewrites the section to cite TREC's enabling act and to make the section easier to read. The amendment also clarifies that a person engaged in real estate brokerage in a foreign state that does not license brokers will be considered a licensed broker for the purpose of Texas Civil Statutes, Article 6573a, §14 if the person complies with the law of the foreign state and practices there as a real estate broker.

The amendment to §535.132 adds limited liability companies to the general provisions of the section relating to the licensing of corporations chartered in another state. These entities are treated in the same manner in Texas Civil Statutes, Article 6573a, and the amendment clarifies that a limited liability company created under the law of another state may apply for a Texas real estate broker license if the limited liability company is licensed as a broker in the state in which it was created or is licensed as a broker by a state in which it is permitted to engage in business as a foreign limited liability company. In some states, a limited liability company or corporation cannot be licensed as a broker, and the amendment clarifies that the business entity may use a license issued by another state for the purpose of qualifying for a Texas license.

The Texas Association of Realtors commented on a typographical error in §535.132 which was corrected in the final version of the section.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.132. Eligibility for Licensure.

(a) A person residing in another state may apply for a license under the provisions of Texas Civil Statutes, Article 6573a, (the Act), §14(b) and this section if the person:

(1) is licensed as a broker by the other state; or

(2) was licensed as a Texas real estate salesperson or broker no more than six years prior to the filing of the application. The commission may waive examination, education and experience requirements if the applicant satisfies the conditions established by §535.61 of this title (relating to Waiver of Examinations) and by either §535.62 of this title (relating to Brokers: Education and Experience) or §535.63 of this title (relating to Salespersons: Education).

(b) A limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) The entity is licensed as a broker by the state in which it was created or chartered.

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) An individual licensed as a broker who subsequently moves to another state is not required to maintain an office in Texas unless the individual sponsors a salesperson in this state.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) To be eligible to receive a license and maintain an active license, a limited liability company or corporation created or chartered in another state must designate a person to act for it who meets the requirements of the Act, §6(c), although the designated person is not required to be a resident of Texas. Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas real estate broker license.

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 16, 2000.

TRD-200005811

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Effective date: October 1, 2000
Proposal publication date: May 26, 2000
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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §§535.141, 535.143-535.148, 535.154, 535.156, 535.159

The Texas Real Estate Commission (TREC) adopts amendments to §535.141, concerning initiation of investigation, §535.144, concerning a licensee's conduct when acquiring or disposing of property, §535.154, concerning false advertising, and new §535.148, concerning a licensee's receiving an undisclosed commission or rebate, with changes to the proposed text as published in the May 26, 2000, issue of the *Texas Register* (23 TexReg 4690). TREC adopts amendments to §535.143, concerning fraudulent procurement of a license, §535.145, concerning false promises, §535.146, concerning failure to properly account for or remit money and commingling, §535.147, concerning splitting a fee with an unlicensed person, §535.156, concerning dishonesty, bad faith or untrustworthiness, and §533.159, concerning failing properly deposit escrow monies, without changes to the proposed text.

The amendment to §535.141 clarifies that easement and right-of-way agents registered with TREC are "licensees" for the purposes of the section, which relates to the investigation of complaints and the effect of a suspension or revocation on a licensee's business. The Texas Association of Realtors (TAR) commented that the portion of the proposed amendment permitting a licensee not named in the original complaint to be included in the complaint was in conflict with the law and raised fundamental due process concerns. TAR also suggested moving the definitions to the beginning of the section and removing unnecessary references to registration. The commission determined that it should not adopt the portion to which TAR objected and made the other suggested changes.

The amendment to §535.143 shortened the section by combing two related subsections.

The amendment to §535.144 clarifies when a licensee is considered to be acting on his or her own behalf. On final adoption, the commission deleted a phrase whose meaning TAR questioned, regarding "control" of a business entity. The final version will treat a licensee as acting on his or her own behalf in a transaction if the licensee is acting on behalf of a business entity in which the licensee is more than a 10% owner. The amendment ensures that licensees who thus have a material stake in the transaction disclose their status as licensees so as to prevent advantage being taken by reason of the their position and expertise.

The amendment to §535.145 concerns false promises by a licensee, which are a basis for disciplinary action under Texas Civil Statutes, Article 6573a (the Act), §15(a)(6)(B). The amendment clarifies that it is not necessary for a party to a real estate transaction to have relied upon a false promise made by a licensee for TREC to discipline the licensee.

The amendment to §535.146 provides a definition of the term "trust account" consistent with the Act, and requires a licensee maintaining a trust account to retain a documentary record of each deposit or withdrawal from the account for a period of four years. The amendment also made a nonsubstantive change in order to make the section easier to read. TAR suggested that §535.146, §535.159 and §535.160 be combined to simplify the trust account provisions and minimize the number of provisions licensees must consider. The commission determined that dividing the sections by their appropriate statutory reference was appropriate and declined to make the suggested change.

The amendment to §535.147 addresses the splitting of fees with an unlicensed person, which is prohibited by the Act. The amendment clarifies that the Act is not violated in this regard if the licensee pays a portion of the licensee's fee to a party in the transaction, since the Act does not require a person to be licensed as a real estate broker or salesperson to act as a principal in a transaction. The amendment also requires the licensee who intends to pay a portion of the licensee's fee to a party the licensee does not represent in the transaction to obtain the consent of the party represented by the licensee before making the payment. TAR suggested that the section be rewritten to include fees paid to persons who are not registered as easement or right-of-way agents. Because the statutory provision concerned addresses only persons who are acting as real estate agents, not persons acting as easement or right-of-way agents, however, the commission declined to make the suggested change.

New §535.148 concerns a licensee's acceptance of an undisclosed commission or rebate. The new section prohibits a licensee from receiving a commission, rebate, or fee in a transaction from a person other than the person the licensee represents without first disclosing the licensee's intention to all parties and obtaining the consent of all parties. On the suggestion of TAR, the commission modified the section to exclude payments from one licensee to another for a referral, as referrals may occur before the parties are known, as when a prospective buyer is referred to a broker in another city.

The amendment to §535.154 clarifies that any advertisement that does not readily identify the licensee as a real estate agent must include an additional designation such as "agent" or "broker." The amendment deletes as unnecessary a provision that encouraged licensees to use a broker's name first in a business name including the name of a salesperson. The amendment also addresses advertisements which offer a rebate of the licensee's commission or which promote the use of a service provider with an expectation that the licensee will be paid by the service provider. In such cases, the licensee will be required to include disclosures in the advertisement that payment of the rebate is subject to the consent of the person the licensee represents in the transaction, and that the payment of the rebate is subject to restrictions if use of a specific service provider is required to receive the rebate. The amendment also would require the licensee to disclose in the advertisement that the licensee may receive compensation from the service provider. TAR suggested that the commission not adopt a provision which would have the effect of increasing the number of communications from licensees which are considered advertisements if the licensee's representation agreement is not in writing. The commission concurred. TAR also suggested a number of grammatical rewrites, rewording of the section and placing disclosure requirements elsewhere and not requiring them in advertisements. The commission determined that the proposed language was appropriate

and should be included in the licensees' advertisements and declined to make the requested changes.

The amendment to §535.156 revises the section to require a licensee to provide information to a principal considering whether to make an offer, as well as to a principal considering whether or not to accept or reject an offer. The amendment also makes the section consistent with current industry practice of obtaining written consent from a principal if the licensee is not to submit an offer to the principal after the principal has accepted an offer to buy, sell, rent or lease the property.

The amendment to §535.159 clarifies that a person depositing funds with a broker may authorize the broker in writing to retain any interest on the deposited funds. In the absence of a written agreement, the section requires the person who deposited the funds to receive any interest earned on the funds.

The amendments and new section are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.141. Initiation of Investigation.

(a) As used in this section, the term "licensee" includes a person registered as an easement or right-of-way agent and the term "license" includes a registration issued by the commission.

(b) If the Texas Real Estate Commission (the commission) receives a complaint, and such complaint on its face alleges a possible violation of the Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act), the commission shall investigate the complaint. The commission, on its own motion, with reasonable cause, may initiate an investigation of the actions and records of a licensee.

(c) A real estate broker is responsible for all acts and conduct performed by a real estate salesperson associated with or acting for the broker. A complaint which names a licensed real estate salesperson as the subject of the complaint but does not specifically name the salesperson's sponsoring broker, is a complaint against the broker sponsoring the salesperson at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson as an agent for the broker.

(d) The person designated by a licensed corporation, limited liability company or partnership to act as its officer, manager or partner is responsible for all acts and conduct as a real estate broker performed by or through the business entity. A complaint which names a corporation, limited liability company or partnership licensed as a broker as the subject of the complaint but which does not specifically name the designated officer, manager or partner of the business entity, is a complaint against the broker acting as the designated officer, manager or partner at the time of any alleged violation for the limited purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients. A complaint which names a salesperson sponsored by a licensed corporation, limited liability company or partnership but which does not specifically name the designated person of the business entity is a complaint against the broker who was acting as designated person at the time of any alleged violation by the salesperson for the limited purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) Once a complaint has been filed with the commission, the commission has jurisdiction to consider, investigate and take action based on the complaint. Complaints may be withdrawn only with the consent of the commission.

(f) If information obtained by the commission in the course of the investigation of a complaint or as a result of an investigation authorized by the members of the commission constitutes reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or a rule of the commission, no additional authorization shall be required for the commission to investigate and take appropriate action based on the information.

(g) If the commission suspends or revokes a license or probates an order of suspension or revocation against a licensee, the commission may monitor compliance with its order and initiate action based on the authority of the original complaint or original authorization by the members of the commission.

(h) A person whose license has been suspended may not during the period of any suspension:

(1) perform or attempt to perform any act for which a license is required by law or commission rule; or

(2) unless instructed otherwise by the principals to the transaction, continue to hold any funds received in a real estate transaction in which the person acted as a real estate broker or salesperson.

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) if the person is a real estate salesperson, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a real estate broker, notify in writing any salespersons he or she sponsors, or any corporation, limited liability company or partnership for which the person is designated as an officer, manager or partner that:

(A) his or her real estate broker license will be suspended; and,

(B) once the suspension is effective any salesperson he or she sponsors or who are sponsored by the corporation, limited liability company or partnership will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new person and files a change of designated officer, manager or partner with the commission;

(3) if the person has a contractual obligation to perform services for which a license is required by law or commission rule, notify in writing all other parties to the contract that the services cannot be performed due to the suspension;

(4) if the person is a real estate salesperson and is directly involved in any real estate transaction in which the salesperson acts as an agent, notify in writing all other parties, including principals and other real estate brokers, that the person cannot continue performing real estate brokerage services due to the suspension; and

(5) if the person holds money in trust in any transaction in which the person is acting as a real estate broker, remit such money in accordance with the instructions of the principals.

(j) A person may not assign to another licensee a personal service contract to which the person is a party and which obligates the

person to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.

§535.144. When acquiring or disposing of own property.

A licensee, when engaging in a real estate transaction on his or her own behalf, or on behalf of a business entity in which the licensee is more than a 10% owner, is obligated to inform any person with whom the licensee deals that he or she is a licensed real estate broker or salesperson acting on his or her own behalf either by disclosure in any contract of sale or rental agreement, or by disclosure in any other writing given prior to entering into any contract of sales or rental agreement. A licensee shall not use the licensee's expertise to the disadvantage of a person with whom the licensee deals.

§535.148. Receiving an Undisclosed Commission or Rebate.

A licensee may not receive a commission, rebate, or fee in a transaction from a person other than the person the licensee represents without first disclosing to all parties to the transaction that the licensee intends to receive the commission, rebate or fee, and obtaining the consent of all parties. This section does not apply to referral fees paid by one real estate licensee to another licensee.

§535.154. Misleading Advertising.

(a) For the purposes of this section, an "advertisement" is a written or oral statement which induces or attempts to induce a member of the public to use the services of a real estate licensee. The term "advertisement" includes, but is not limited to all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationary, business cards, signs and billboards. The provisions of this section apply to all advertisements by a real estate licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement. Provided, however, a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services is not an advertisement for the purposes of this section

(b) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name which contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.

(d) In an advertisement placed by a licensee that does not readily identify the licensee as a real estate agent, the advertisement must include an additional designation such as "agent," "broker" or a trade association name which serves clearly to identify the advertiser as a real estate agent.

(e) Because salespersons may lawfully engage in brokerage activity only when they are associated with, and acting for, a broker, a listing may be solicited and accepted only in a broker's name. Advertisements concerning a broker's listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement which in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage.

(f) A corporation or limited liability company licensed as a real estate broker may do business in the name in which it was chartered or registered by the Secretary of State.

(g) A licensee's advertising must not cause a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage, provided that an advertisement of a trade, business, or assumed name does not constitute a holding out that a specific person is engaged in real estate brokerage.

(h) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies as a real estate broker or agent the person publishing the advertisement. Advertisements in which the required language is not clear and conspicuous shall be deemed by the commission to be deceptive and likely to mislead the public for the purposes of Texas Civil Statutes, Article 6573a (the Act), §15(a)(6)(P). The commission shall consider language as clear and conspicuous if it is in at least the same size of type or print as the largest telephone number in the advertisement, or it otherwise clearly and conspicuously identifies as a real estate broker or agent the person who published it. The commission shall consider advertisements not to be in compliance with this subsection if the required language is in print or type so small that it cannot be easily read from the street or sidewalk. This subsection does not apply to signs placed on real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the provisions of the Act regarding advertising.

(i) A real estate licensee placing an advertisement on the Internet, electronic bulletin board, or similar mechanism must include on each page on which the licensee's advertisement appears any information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(j) A real estate licensee placing an advertisement by using any electronic communication, including but not limited to E-mail and E-mail discussion groups, must include in the communication and in any attachment which is an advertisement the information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(k) An advertisement containing an offer to rebate to a principal a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction . If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(l) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

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 16, 2000.

TRD-200005812
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General Counsel
Texas Real Estate Commission
Effective date: October 1, 2000
Proposal publication date: May 26, 2000
For further information, please call: (512) 465-3900

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22 TAC §§535.148, 535.150-535.152, 535.155, 535.157, 535.158

The Texas Real Estate Commission (TREC) adopts the repeal of §§535.148, 535.150-535.152, 535.155, 535.157 and 535.158, concerning various grounds for disciplinary action against real estate brokers and salespersons, without changes to the proposed text as published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4693). The repeals were adopted because the affected sections merely restate various provisions of Texas Civil Statutes, Article 6573a, and are unnecessary.

No comments were received regarding the proposal.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Filed with the Office of the Secretary of State on August 16, 2000.

TRD-200005813
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General Counsel
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Effective date: October 1, 2000
Proposal publication date: May 26, 2000
For further information, please call: (512) 465-3900

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SUBCHAPTER Q. SUIT FOR COMPENSATION

22 TAC §535.191, §535.192

The Texas Real Estate Commission (TREC) adopts the repeal of §535.191, concerning prerequisites for filing a suit for a commission, and §535.192, concerning the requirement for a written agreement to file a suit for a commission, without changes to the proposed text as published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4694). The repeals are adopted because the affected sections merely restate provisions of Texas Civil Statutes, Article 6573a, and are unnecessary.

No comments were received regarding the proposal.

The repeals are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Filed with the Office of the Secretary of State on August 16, 2000.

TRD-200005814
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General Counsel
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Effective date: October 1, 2000
Proposal publication date: May 26, 2000
For further information, please call: (512) 465-3900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §101.27, Emissions Fees, and §101.333, Allocation of Allowances. Section 101.27 is adopted with changes to the proposed text as published in the April 7, 2000, issue of the *Texas Register* (25 TexReg 2912). Section 101.333 is adopted without changes and will not be republished. These sections will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE ADOPTED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created 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. SB 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. SB 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Finally, the commission was 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 Voluntary Emission Reduction Permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). SB 766 also amended TCAA, §382.0621(d) to require increasing emissions fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This adoption implements elements of SB 766 relating to emissions fees, adds the ability for the commission to accept fee payments via electronic funds transfer, and makes administrative revisions. Other elements of SB 766, including MPPs, de minimis criteria, exemptions from permitting, and permits by rule are addressed in concurrent adoptions of new and amended sections

in 30 TAC Chapter 106 and Chapter 116. The authority for emissions fees is in TCAA, §382.0621, concerning Operating Permit Fee.

SECTION BY SECTION DISCUSSION

The adopted amendments to §101.27 add a new §101.27(c)(2) to implement the emissions fees required by TCAA, §382.0621(d). For grandfathered facilities with emissions in excess of 4,000 tons per year (tpy) which do not have a permit application pending on or after September 1, 2001, all emissions from the facility, including those emissions in excess of 4,000 tpy would be used to calculate the emissions fees required by §101.27. Under the adopted amendment, for the first 4,000 tons, per pollutant, the emissions fee would be $26 per ton. Emissions fees for emissions in excess of 4,000 tpy would be $78 per ton of each pollutant for fiscal year (FY) 2002, and would triple each fiscal year thereafter. Thus, FY 2003, the fee for emissions in excess of 4,000 tpy per regulated air pollutant would be $234 per ton. The amended section also allows for fee payments to be made by electronic funds transfer, updates the emissions fee rate table to include FYs 1998 - 2000, reflects the recent reorganization of the commission's permitting offices, corrects a reference to 40 Code of Federal Regulations Part 70, and revises citations to reflect insertion of a new §101.27(c)(2).

Section 101.333 is amended to correct an inadvertent omission of the term "NO_x."

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking 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. The amendments are intended to protect the environment and reduce risks to human health from environmental exposure. The amendment to §101.27 requires emissions fees for grandfathered facilities that do not have a permit application pending on or after September 1, 2001, on all emissions, including emissions in excess of 4,000 tons; and triple the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year. These increasing fees could adversely affect 14 facilities at seven sites in Texas which emit over 4,000 tons of emissions if those facilities do not have a permit application pending on or after September 1, 2001. A requirement that results in a financial impact does not, in and of itself, define a rule as being a major environmental rule. It is true that the impacts of the statutorily mandated fees on the 14 potentially affected facilities could be adverse, for those few facilities. However, implementation of the statutorily mandated fees 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 commission does not believe that the rules implementing the statutorily mandated fees will affect any of the 14 facilities at seven sites, because it is anticipated that they will all apply for a permit by September 1, 2001. Section 2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of §2001.0225(a). Specifically, the adopted amendments do not exceed a standard set by state or federal law, but comply with provisions in SB 766 and the Texas Health and Safety Code, concerning Operating Permit Fees. The adopted amendment does not exceed a requirement of a delegation agreement and was not developed solely under the general powers of the agency, but was specifically developed to implement the provisions of the Texas Health and Safety Code as amended by SB 766.

TAKINGS IMPACT ANALYSIS

The commission has prepared a takings impact assessment for the adopted rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The adopted rules would increase emissions fees on emissions in excess of 4,000 tpy for grandfathered facilities that do not have a permit application pending on or after September 1, 2001. This action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a takings. This action meets an exception to §2007.043, because it is implementing the specific requirement of TCAA, §382.0621(d).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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 30 TAC §281.45(a)(3), and 31 TAC §505.11(b)(2), 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. The adopted rule is intended to provide incentive for the reduction of emissions at grandfathered facilities, and the commission has determined that the rule is 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 action does not authorize any new emissions. 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.

HEARING AND COMMENTERS

The commission held a public hearing on this proposal in Austin on May 4, 2000. The commission received comments from the

following organizations and companies during the public comment period which closed on May 8, 2000: ExxonMobil Refining and Supply (ExxonMobil), the Texas Oil and Gas Association (TxOGA), Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP), and Brown McCarroll & Oaks Hartline, L.L.P. (BMOH). TxOGA and TIP supported the amendment. ExxonMobil and BMOH opposed it.

ANALYSIS OF TESTIMONY

ExxonMobil commented that it acknowledges that SB 766 required the trebling emission fee for grandfathered facilities which emit over 4,000 tons per year which have not submitted a permit application before September 1, 2001. However ExxonMobil believes that this retroactive change in the regulatory process runs counter to the established methodology for permitting programs which does not mandate changes to existing facilities which are not modified.

The commission is required to implement the fee increases as directed by TCAA, §382.0621(d). The fee increase is required regardless of whether a facility has been modified.

TxOGA supports trebling emission fees each year, beginning in FY 2002, for facilities with emissions in excess of 4,000 tons per year per regulated pollutant - as drafted. TIP commented that the trebled emission fees would apply to emissions in "excess" of 4,000 tons per year. TxOGA and TIP support the option to make emission fee payments by electronic funds transfer.

The commission agrees with the commenters and has amended §101.27(c)(2) to clarify that the trebled emission fees apply on a per pollutant basis.

BMOH commented that it is concerned with the commission's declaration that the implementation of statutorily mandated fees 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. Based upon an extrapolation of the example provided in Draft Regulatory Impact Analysis, the commenter questioned whether or not the commission believes any rule could have an adverse impact if this one does not.

Texas Government Code, §2001.0225, defines a "major environmental rule" as 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 commission does not believe that implementation of the statutorily mandated fees will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the increasing fees potentially adversely affect only 14 facilities at seven sites in Texas if those facilities do not have a permit application pending on or after September 1, 2001. A requirement that results in a financial impact does not, in and of itself, define a rule as being a major environmental rule. The commission does not believe that the rules implementing the statutorily mandated fees will affect any of the 14 facilities at seven sites, because it is anticipated that they will all apply for a permit by September 1, 2001. Therefore, the commission does not believe this rule is a major environmental rule. Even if the adopted amendments were a major environmental rule, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of 2001.0225(a). Specifically, the adopted amendment does not exceed a standard set by state or federal law, but complies with provisions in SB 766 and the Texas Health and Safety Code, concerning Operating Permit Fees. The adopted amendment does not exceed a requirement of a delegation agreement and was not developed solely under the general powers of the agency, but was specifically developed to implement the provisions of the Texas Health and Safety Code as amended by SB 766.

SUBCHAPTER A. GENERAL RULES

30 TAC §101.27

STATUTORY AUTHORITY

The amendment is adopted under TCAA, §382.0621, which authorizes the commission to triple emissions fees for grandfathered facilities over 4,000 tpy which do not have a permit application pending on or after September 1, 2001. The amendment is also adopted under 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; and §382.0622, which defines Clean Air Act fees and their use.

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate emissions fee. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission account numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the appropriate commission regional office to obtain an account number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If the commission is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (c)(4) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules promulgated by EPA at 40 Code of Federal Regulations (CFR) 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed at 40 CFR 51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

(1) the account has the potential to emit, at maximum operational or design capacity, 100 tons per year (tpy) or more of any single air pollutant;

(2) the account has the potential to emit, at maximum operational or design capacity, 50 tons per year or more of volatile organic compounds (VOC) or nitrogen oxides (NO_x) and is located in any serious ozone nonattainment area listed in §101.1 of this title (relating to Definitions);

(3) the account has the potential to emit, at maximum operational or design capacity, 25 tons per year or more of VOC or NO_x and is located in any severe ozone nonattainment area listed in §101.1 of this title;

(4) the account emits ten tons per year or more of a hazardous air pollutant, as defined in the FCAA, §112;

(5) the account emits an aggregate of 25 tons per year or more of hazardous air pollutants, as defined in the FCAA, §112;

(6) the account is subject to the National Emission Standards for Hazardous Air Pollutants (40 CFR 61) that apply to nontransitory sources;

(7) the account is subject to New Source Performance Standards (40 CFR 60);

(8) the account is subject to Prevention of Significant Deterioration (40 CFR 52) requirements; or

(9) the account is subject to Acid Deposition provisions in the FCAA Amendments of 1990, Title IV.

(b) Payment. Fees shall be remitted by check, electronic funds transfer, or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and sent to the TNRCC address printed on the fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, air emissions inventory account number, Standard Industrial Classification (SIC) category, the allowable levels and/or actual emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment.

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. The fee applies to the tonnage of regulated pollutants at the account, including those emissions from point and fugitive sources during normal operations. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations except as provided in paragraph (2) of this subsection. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(c)(1)

(2) On and after September 1, 2001, a grandfathered facility, as defined in §116.10(6) of this title (relating to General Definitions) that does not have a permit application pending under Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) shall use all emissions, including emissions in excess of 4,000 tons per pollutant, for fee calculations. For the first 4,000 tons per pollutant, the rate in paragraph (1) of this subsection shall apply. For emissions in excess of 4,000 tons per pollutant, the rate will be $78 per ton for fiscal year 2002 and will triple, each fiscal year, thereafter.

(3) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA approved methods and quality-assured by the executive director. All measurements, monitored values, or testing must have been performed during the basis year as defined in subsection (c)(1) of this section or if not performed during the basis year, must be representative of the basis year as defined in subsection (c)(1) of this section. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emissions rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(4) For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to the FCAA, §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders. The term "normal operations" shall mean all operations other than those documented under §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements) or §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(d) Due date. Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed. If an account commences or resumes operation after November 1 of the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.

(e) Nonpayment of fees. Each emissions fee payment must be received by the due date specified in subsection (d) of this section. Failure to remit the full emissions fee by the due date shall result in enforcement action under the Texas Clean Air Act, Texas Health and Safety Code, §382.082 or §382.088. In addition, the Texas Clean Air

Act, Texas Health and Safety Code, §382.091(a)(2), makes it a criminal offense to intentionally or knowingly fail to pay a required fee. The provisions of this section, as first adopted and amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed pursuant to such provisions as adopted or as amended remain a continuing obligation.

(f) Late payment penalties. The owner or operator of an account failing to make payment of emissions fees when due shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

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 15, 2000.

TRD-200005726
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER H. EMISSIONS BANKING AND TRADING
DIVISION 2. EMISSIONS BANKING AND TRADING OF ALLOWANCES

30 TAC §101.333

STATUTORY AUTHORITY

The amendment is adopted under Texas Utilities Code (TUC), §39.264, which authorizes the commission to require the permitting of grandfather electric generating facilities and issue allowances to meet those permit emission restrictions; 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; and §382.0622, which defines Clean Air Act fees and their use.

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 15, 2000.

TRD-200005727
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CHAPTER 106. PERMITS BY RULE

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Chapter 106, Subchapter A, §§106.1, 106.2, 106.4, 106.6, and 106.13, General Requirements; Subchapter C, §§106.101 - 106.103, Domestic and Comfort Heating and Cooling; Subchapter D, §§106.121 - 106.124, Analysis and Testing; Subchapter E, §§106.141 - 106.150, Aggregate and Pavement; Subchapter F, §§106.161 - 106.163, Animal Confinement; Subchapter G, §§106.181 - 106.183, Combustion; Subchapter H, §§106.201 - 106.203, Concrete Batch Plants; Subchapter I, §§106.221, §106.223 - 106.229, and 106.231, Manufacturing; Subchapter J, §§106.241 - 106.245, Food Preparation and Processing; Subchapter K, §§106.261 - 106.266, General; Subchapter L, §§106.281 - 106.283, 106.291, 106.301, and 106.302, Feed, Fiber, and Fertilizer; Subchapter M, §§106.311 - 106.322, Metallurgy; Subchapter N, §§106.331 - 106.333, Mixers, Blenders, and Packaging; Subchapter O, §§106.351 - 106.355, Oil and Gas; Subchapter P, §§106.371 - 106.376, Plant Operations; Subchapter Q, §§106.391 - 106.396, Plastics and Rubber; Subchapter R, §§106.411 - 106.419, Service Industries; Subchapter S, §§106.431 - 106.436, Surface Coating; Subchapter T, §§106.451 - 106.454, Surface Preparation; Subchapter U, §§106.471 - 106.478, Tanks, Storage, and Loading; Subchapter V, §§106.491 - 106.496, Thermal Control Devices; Subchapter W, §106.511 and §106.512, Turbines and Engines; and Subchapter X, §§106.531 - 106.534, Waste Processes and Remediation.

Sections 106.1, 106.2, 106.4, 106.124, 106.224, 106.261, 106.352, 106.435, 106.476, 106.491, 106.492, 106.532, and 106.533 are adopted *with changes* to the proposed as published in the April 7, 2000 issue of the *Texas Register* (25 TexReg 2916). Sections 106.6, 106.13, 106.101 - 106.103, 106.121 - 106.123, 106.141 - 106.150, 106.161 - 106.163, 106.181 - 106.183, 106.201 - 106.203, 106.221, 106.223, 106.225 - 106.229, 106.231, 106.241 - 106.245, 106.262 - 106.266, 106.281 - 106.283, 106.291, 106.301, 1106.302, 106.311 - 106.322, 106.331 - 106.333, 106.351, 106.353 - 106.355, 106.371 - 106.376, 106.391 - 106.396, 106.411 - 106.419, 106.431 - 106.434, 106.436, 106.451 - 106.454, 106.471 - 106.475, 106.477, 106.478, 106.493 - 106.496, 106.511, 106.512, 106.531, and 106.534 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE ADOPTED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created 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. Senate Bill 766 provided a new name, permits by rule, for authorization of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Finally, the commission was 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 Voluntary Emission Reduction Permit (VERP) program for permitting of grandfathered facilities,

and the multiple plant permit. Senate Bill 766 also amended TCAA, §382.0621(d) to require increasing emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures. This adoption implements the elements of SB 766 relating to exemptions from permitting and permits by rule. Other elements of SB 766, including emissions fees, multiple plant permits, and de minimis criteria, as well as additional elements relating to exemptions from permitting and permits by rule, are being addressed in concurrent adoptions for new and amended sections in 30 TAC Chapter 101 and Chapter 116.

Prior to passage of SB 766, under TCAA, §382.057, the commission had the authority to exempt, from permitting requirements, changes within any facility and certain types of facilities that would not make a significant contribution of air contaminants to the atmosphere. These exemptions from permitting were contained in Chapter 106, and were also considered to be permits by rule, with many containing emission control requirements or operational restrictions to ensure insignificance. In order to remove the appearance that these insignificant facilities were exempt from environmental regulation in addition to being exempt from permitting, the new TCAA, §382.05196 gives the commission authority to adopt permits by rule for certain types of facilities that will not make a significant contribution of air contaminants to the atmosphere if all of the conditions of an applicable permit by rule are observed. Permits by rule may be used to authorize new construction and/or modifications or changes at the types of facilities listed in Subchapters C - X of this chapter.

The authority for exemptions from permitting is in TCAA, §382.057, concerning Exemption. The authority for permits by rule is in TCAA, §382.051, concerning Permitting Authority of the Commission; Rules; and in TCAA, §382.05196, concerning Permits by Rule.

SECTION BY SECTION DISCUSSION

The new title for Chapter 106 is "Permits by Rule."

The adopted amendments to Subchapter A, concerning General Requirements, clarify that the general requirements apply to permits by rule. The commission added the words "changes within" and "certain" to both §106.1 and §106.2 in order to combine the provisions of TCAA, §382.05196 and §382.057 and to make it clear that Permits by Rule can be used for both changes to a facility and for new facilities. Section 106.13 is amended to clarify that the authorizations formerly known as standard exemptions and exemptions from permitting would be referred to as permits by rule in commission rules, though the conditions of their use would not change.

The adopted amendments to Subchapters C - X revise these sections to delete the word "exempt" and insert the term "permitted by rule." The adoption also contains administrative changes, such as changing references to the Office of Air Quality to references to the Office of Permitting, Remediation, and Registration. In addition, the name of §106.332 is proposed to be changed from "Coating" to "Chlorine Repackaging." This name change corrects a mistake made during a previous adoption.

Sections 106.201 - 106.203 of Subchapter H, concerning Concrete Batch Plants, are amended to state that registrations for concrete batch plants under those sections would no longer be accepted by the commission upon issuance of a concrete batch plant standard permit. The commission is currently developing a standard permit for concrete batch plants, with issuance anticipated in August 2000. Until the standard permit is issued, registrations for these exemptions will continue to be accepted. Since the new standard permit will be issued by the commission during a commission agenda, the affected public will have notice of the action prior to issuance. This adoption deletes the cross-reference to old exemption from permitting numbers currently listed after the title of each exemption, which accounts for the changes in §§106.124, 106.224, 106.261, 106.352, 106.435, 106.476, 106.491, 106.492, 106.532, and 106.533.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking 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. The amendments to Chapter 106 are administrative in nature, do not add regulatory requirements, and are intended to clarify that certain facilities, while being exempt from case-by case permitting, are not exempt from environmental regulation. The amendments do not impose any additional regulatory requirements beyond those that currently exist. The amendments do not meet the definition of "major environmental rule" because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of §2001.0225(a). Specifically, these new sections and amendments do not exceed a standard set by state or federal law, but are proposed to clarify the exemption from permitting process under the Texas Health and Safety Code. The amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission has determined that this action does not restrict or limit an owner’s right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a takings. The amendments are administrative and do not impose any new regulatory requirements. The bulk of

the proposal merely changes the name of exemptions from permitting to permits by rule. The changes to §§106.201 - 106.203 are intended to provide notice that upon issuance of the standard permit for concrete batch plants, registrations under those exemptions will no longer be accepted by the commission. This change does not impact existing authorization under these exemptions. The adopted rules are reasonably taken to fulfill requirements of state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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. The adopted rules are administrative changes, and 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 action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations (CFR) because it does not authorize an emission rate in excess of that specified by federal requirements.

HEARING AND COMMENTERS

The commission held a public hearing on this proposal in Austin on May 4, 2000. The commission received comments from the following organizations and companies: the United States Environmental Protection Agency (EPA), the Texas Oil and Gas Association (TxOGA), Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP), and Brown McCarroll & Oaks Hartline, L.L.P. (BMOH). The commenters generally supported the amendments.

ANALYSIS OF TESTIMONY

The EPA requested that the commission complete a checklist entitled "Checklist For Comparison of NSR Regulations to Requirements of 40 CFR Part 51, Subpart I, Review of New Sources and Modifications," to aid the EPA in determining whether the proposed revisions meet the requirements of that subpart.

The referenced checklist appears to be a useful tool for the EPA to verify that proposed SIP revisions meet the requirements of 40 CFR Part 51, Subpart I. However, the commission is not submitting the revisions to Chapter 106 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to Chapter 106. If and when Chapter 106 is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding Chapter 106.

EPA commented that since no previous versions of Chapter 106 have been submitted as SIP revisions, the State of Texas needs to submit the entire Chapter 106, and not just the provisions that are proposed to be revised in this action.

The commission is not submitting the adopted revisions to Chapter 106 as a SIP revision. Because of the ongoing concern with minor new source review authorizations being incorporated into operating permits as applicable requirements and the lack of finality of 40 CFR Part 70, the commission is not prepared to submit Chapter 106, in its entirety, as a SIP revision at this time.

EPA commented that §106.6, Registration of Emissions, allows an owner or operator to certify and register enforceable maximum emission rates which are less than the thresholds in §106.4. EPA asked how the source specific certification and registration meets the public notice provisions of 40 CFR 51.161.

The commission is not submitting the revisions to Chapter 106 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to Chapter 106. If and when Chapter 106 is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding §106.6.

EPA commented that Chapter 106 needs to include provisions which ensure that a source which operates under a permit by rule verifies on a continuing basis that it qualifies for, and complies with, the terms and conditions in the permit by rule. They suggest that Chapter 106 include the following: records demonstrating, on a continual basis, that the source meets §106.4, and records demonstrating continual compliance with any limits on emissions, production, operation, or other provisions in the permit by rule. Chapter 106 should also specify where the records are to be kept, that records will be made available to the TNRCC and other agencies authorized to enforce, and specify the length of time (no less than two years) that the source must keep the records. Finally, if these provisions are required by other TNRCC regulations, EPA requested that those other regulations be identified and that the commission show how the regulations are applicable to sources subject to permits by rule.

The current revisions to Chapter 106 being adopted are primarily administrative in nature. Because the proposed rule did not include substantive requirements such as a general recordkeeping provision, the commission does not believe that it is appropriate to add one in this adoption, but will do so in a subsequent rulemaking. The commission agrees with the EPA that some type of general recordkeeping provision in Subchapter A of Chapter 106 would help to clarify recordkeeping requirements, even though facilities which use permits by rule must currently demonstrate that they meet the requirements of the permits by rule in order to claim them. In addition, specific permits by rule, e.g., §106.436, Auto Body Shops, currently contain recordkeeping requirements. Nonetheless, Chapter 106, Subchapter A is expected to be reopened shortly after the adoption of this package. A broad requirement requiring demonstration of compliance will be added at that time.

ExxonMobil, TxOGA, and TIP support the renaming of exemptions from permitting to permits by rule. This change will accurately convey the intent and mandate of the state regulations to the public.

The commission agrees and has adopted the rule as proposed.

TIP commented that the commission did not discuss in the preamble why the phrases "changes within" facilities or "certain" types of facilities were added to §106.1 and §106.2. They commented that if the new phrases were construed to mean that the chapter identifies only "changes," this implies that a permit by rule could not apply to an insignificant "new" facility, which is inconsistent with existing practice. They recommended deleting the terms "changes within" and "certain."

The commission added the referenced phrases in order to combine the provisions of TCAA, §382.05196 and §382.057. In doing so, the commission intended to make it clear that Permits by Rule could be used for both changes to a facility and for new facilities. The commission is not altering current practice. The rule and preamble have been revised to clarify this issue.

TIP commented that some permits preclude the use of a specific permit by rule. They are concerned that §106.4(a)(7) could be interpreted as precluding the use of any permit by rule rather than just the one permit by rule that is expressly prohibited from use by a particular permit.

While reviewing the rule and developing the response to this comment, the commission realized that the article "a" was inadvertantly omitted from the version of the rule published in the *Texas Register*. Section 106.4(a)(7) should include the article "a" before the term "permit by rule" and the adopted rule has been revised accordingly. This should clarify that a prohibition on the use of a permit by rule may refer to specific permits by rule.

BMOH opposed the addition of §§106.201(11), 106.202(14), and 106.203(12), which would eliminate the availability of a permit by rule for concrete batch plants after the commission issues a standard permit for these types of facilities. BMOH is concerned because standard permits are an optional method of permitting and are not a requirement. Further, standard permits can be revised without using the procedures for rulemaking in the APA. Permittees would be subject to changing control requirements, something that is not required under permits by rule or new source review permits. BMOH suggested that the commission retain the standard exemption unless it is determined that the exemption is no longer protective.

In 1996, the commission directed the study and evaluation of concrete batch plants which register to operate under §§106.201 - 106.203. The study was to determine whether the conditions of these exemptions would ensure compliance with all applicable state and federal air quality standards and therefore, protection of the general health and welfare. Specifically, concrete batch plants were reviewed against §111.155, the National Ambient Air Quality Standards for particulate matter, and the health effects guidelines of the commission. A detailed review began in 1996 and initial recommendations were prepared and presented to the commission. These recommendations were never implemented due to the need to conduct further study regarding compliance with §111.155.

Senate Bill 1298 amended TCAA, §382.058 to prohibit the executive director from requiring applicants to submit air dispersion modeling for a concrete batch plant exemption registration under TCAA, §382.057 if modeling was relied upon in the adoption of an exemption from permitting. To implement the intent of SB 1298 and to complete the protectiveness review, extensive modeling was conducted to determine the off-property impacts of particulate matter from concrete batch plants. The commission did not continue its efforts to verify that the existing permits by rule would ensure compliance with §111.155. Instead, the commission is developing a standard permit under the issuance procedures created in SB 766 to replace the existing permits by rule which are lengthy, complex, widely used, and contentious. This will complete the protectiveness review and implement SB 1298. Therefore, since the commission is creating a standard permit for concrete batch plants that combines requirements for new or relocated concrete batch plants currently in Chapter 106, the commission does not believe that it is appropriate to retain the existing permits by rule for concrete batch plants.

The commission addressed the concerns regarding revisions to standard permits in the rulemaking implementing SB 766 which was adopted in December 1999 (January 7, 2000 (25 TexReg 150)). As discussed in that rulemaking, the standard permit amendment procedures contain criteria for when standard permits should be revised, mechanisms for notifying the public and permittees of proposed amendments, and limitations on when a permittee would have to comply with an amended standard permit. The commission believes these procedures will ensure that permittees are not continuously subject to changing control requirements.

SUBCHAPTER A. GENERAL REQUIREMENTS

30 TAC §§106.1, 106.2, 106.4, 106.6, 106.13

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.1. Purpose.

This chapter identifies certain types of facilities or changes within facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere pursuant to the Texas Health and Safety Code, the TCAA, §382.057 and §382.05196.

§106.2. Applicability.

This chapter applies to certain types of facilities or changes within facilities listed in this chapter where construction is commenced on or after the effective date of the relevant permit by rule.

§106.4. Requirements for Permitting by Rule.

(a) To qualify for a permit by rule, the following general requirements must be met.

(1) Total actual emissions authorized under permit by rule from the facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO_2) or inhalable particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which

constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for a permit by rule under this chapter. Persons claiming a permit by rule under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for a permit by rule under this chapter.

(4) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all facilities permitted by rule at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO_2 or PM_{10}; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(5) Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific permit by rule in this chapter must meet the revised requirements to qualify for a permit by rule.

(6) A facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) There are no permits under the same commission account number that contain a condition or conditions precluding the use of a permit by rule under this chapter.

(b) No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(c) The emissions from the facility shall comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of health and property of the public, and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(d) Facilities permitted by rule under this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

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 15, 2000.

TRD-200005733

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER C. DOMESTIC AND COMFORT HEATING AND COOLING

30 TAC §§106.101 - 106.103

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005734
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER D. ANALYSIS AND TESTING

30 TAC §§106.121 - 106.124

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.124. Pilot Plants.

Any new or modified pilot plant is permitted by rule, provided the following conditions of this section are met.

(1) For purposes of this section, a pilot plant is defined as a facility that is constructed and operated only for one of the following purposes:

(A) testing the manufacturing or marketing potential of a proposed product; or

(B) defining the design of a larger plant; or

(C) studying the behavior of an existing plant through modeling in the pilot plant.

(2) The sum of product, co-product, and by-product production design capacity from the pilot plant shall not exceed five million pounds per year.

(3) Operation of the pilot plant for purposes of testing market potential of a product, co-product, or by-product may not occur beyond the end of the fifth calendar year from the year of initial production (year 1) of the specific product, co-product, or by-product, unless a permit is obtained under §116.110 of this title (relating to Applicability). This five-year limit on pilot plant activity applies to equipment devoted to development of one specific product or process; therefore, that equipment can be subsequently used for development of other process(es) or product(s), setting a new time limit for its use.

(4) The pilot plant shall be located at least 500 feet from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(5) New or increased emissions shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year in total (including fugitives) and shall not exceed 1.0 lb/hr at any single stack (excluding fugitives). In addition, total new or increased emissions of each specific chemical shall not exceed the most stringent applicable requirement of the following:

(A) the chemical-specific emission limits determined by §106.262(3) of this title (relating to Facilities (Emission and Distance Limitations));

(B) the chemical-specific emission limits determined by §106.261(4) of this title (relating to Facilities (Emission Limitations)); or

(C) 6.0 lb/hr for any simple asphyxiant as defined by the American Conference of Governmental Industrial Hygienists.

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 15, 2000.

TRD-200005735
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER E. AGGREGATE AND PAVEMENT

30 TAC §§106.141 - 106.150

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005736
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER F. ANIMAL CONFINEMENT

30 TAC §§106.161 - 106.163

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005737

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER G. COMBUSTION

30 TAC §§106.181 - 106.183

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005738
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER H. CONCRETE BATCH PLANTS

30 TAC §§106.201 - 106.203

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005739
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER I. MANUFACTURING

30 TAC §§106.221, 106.223 - 106.229, 106.231

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.224. Aerospace Equipment and Parts Manufacturing.

Any new aerospace equipment and parts manufacturing plant, or physical and operational change to an existing aerospace equipment and parts manufacturing plant are permitted by rule, provided that the following conditions of this section are satisfied.

(1) For purposes of this section, aerospace equipment and parts manufacturing plant means the entire operation on the property which engages in the fabrication or assembly of parts, tools, or completed components of any aircraft, helicopter, dirigible, balloon, missile, drone, rocket, or space vehicle. This permit by rule will not include composite aerospace equipment and parts manufacturing plants. Composite plants are defined to be plants whose products are less than 50% metal, by weight, based on annual production figures. This definition excludes those operations specifically authorized by other permits by rule. For example, a boiler would not be considered a part of the aerospace manufacturing plant, but could be authorized under §106.181 of this title (relating to Small Boilers, Heaters, and Other Combustion Devices), if all pertinent requirements were met.

(2) Emission points associated with the aerospace equipment and parts manufacturing plant or changes to that plant shall be located at least 100 feet from any off-plant receptor. Off-plant receptor means any recreational area or residence or other structure not occupied or used solely by the owner or operator of the aerospace equipment and parts manufacturing plant or the owner of the property upon which the aerospace plant is located. Controlled access recreational areas owned by the property owner or the owner or operator of the aerospace plant are not off-plant receptors.

(3) The total annual emissions, in tons per year, of the following air contaminants authorized under this section, on a cumulative basis, from the entire aerospace manufacturing plant shall not exceed the values specified:

(A) inhalable particulate matter--five tons per year (tpy);

(B) volatile organic compounds (VOC)--15 tpy;

(C) acid gases or vapors--five tpy;

(D) non-VOC carbon compound emissions--ten tpy;

(E) total of air contaminants in subparagraphs (A) - (D) of this paragraph--25 tpy.

(4) Hourly emissions of total new or increased emissions, including fugitives, of particulate matter or chemicals listed or referenced in Table 262 of §106.262 of this title (relating to Facilities (Emission Distance Limitations)), shall not exceed the hourly emission rate, E, as determined using the equation, E = L/K lb/hr and Table 224A, where:
Figure: 30 TAC §106.224(4) (No change.)

(5) Before construction or change in operation begins, registration shall be submitted to the commission's Office of Permitting, Remediation, and Registration in Austin using a completed Form PI-7. The emission data provided in the PI-7 shall include all process emission sources at the plant, both existing and proposed, and shall be the maximum allowed emissions for permitted units, the actual emissions for existing grandfathered units or units permitted by rule, and the projected maximum allowable emissions for proposed units. Emissions shall be speciated by chemical compound and the stack parameters, as appropriate, for each emission source shall be provided. Registration shall include a description of the project, calculations, and data identifying specific chemical names, "L" values, "D" values, and a description of pollution control equipment, if any.

(6) An emissions inventory shall be compiled and/or updated on an annual basis for all process emission sources on the property, maintained on a two-year rolling retention cycle, and made available upon request by the executive director. The inventory records should include the basis for all emissions estimates, sample calculations, and material usage records. Material and solvent usage records shall be maintained in sufficient detail to document compliance with this section.

(7) There shall be no visible emissions from each existing and proposed stack, hood, vent, or opening to the atmosphere.

(8) Any facility in which any chemical listed in subparagraph (D) of this paragraph will be handled or stored as a liquid or a compressed gas in a compound mixture of a concentration greater than 10% by weight or an aqueous solution of any chemical listed in subparagraph (D) of this paragraph greater than 50% by weight shall comply with subparagraphs (A) - (C) of this paragraph.

(A) The facility shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor.

(B) The cumulative amount of any one of the chemicals listed in subparagraph (D) of this paragraph, resulting from one or more authorizations under this section, shall not exceed 500 pounds on the plant property.

(C) Any chemical listed in subparagraph (D) of this paragraph shall be handled only in containers operated in compliance with United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178).

(D) Listed chemicals are: acrolein, ammonia, bromine, carbon disulfide, chlorine, ethyl mercaptan, hydrogen chloride, hydrogen bromide, hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, phosphine, sulfur dioxide, methyl bromide, methyl isocyanate, methyl mercaptan, nickel carbonyl, phosgene.

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 15, 2000.

TRD-200005740
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER J. FOOD PREPARATION AND PROCESSING

30 TAC §§106.241 - 106.245

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005741
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER K. GENERAL

30 TAC §§106.261 - 106.266

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.261. Facilities (Emission Limitations).

Facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.

(1) This section shall not be used to authorize construction of or any change to a facility authorized in another section of this chapter (see §106.262(1) of this title (relating to Facilities (Emission and Distance Limitations)).

(2) The facilities or changes shall be located at least 100 feet from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.

(3) Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.

(4) Total new or increased emissions, including fugitives, shall not exceed 1.0 lb/hr of any chemical having a limit value (L) greater than 200 milligrams per cubic meter (mg/m^3) as listed and referenced in Table 262 of §106.262 of this title or of any other chemical not listed or referenced in Table 262. Emissions of a chemical with a limit value of less than 200 mg/m^3 are not allowed under this section.

(5) For physical changes or modifications to existing facilities, there shall be no changes to or additions of any air pollution abatement equipment.

(6) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any five-minute period.

(7) For emission increases of five tons per year or greater, notification must be provided using Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(8) For emission increases of less than five tons per year, notification must be provided using either:

(A) Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or

(B) Form PI-7-261(a) by March 31 of the following year summarizing all uses of this permit by rule in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

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 15, 2000.

TRD-200005742
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER L. FEED, FIBER, AND FERTILIZER
DIVISION 1. FEED

30 TAC §§106.281 - 106.283

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005743
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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DIVISION 2. FIBER

30 TAC §106.291

STATUTORY AUTHORITY

The amendment is adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005744
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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DIVISION 3. FERTILIZER

30 TAC §106.301, §106.302

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005745
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER M. METALLURGY

30 TAC §§106.311 - 106.322

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005746
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

SUBCHAPTER N. MIXERS, BLENDERS, AND PACKAGING

30 TAC §§106.331 - 106.333

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005747
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

SUBCHAPTER O. OIL AND GAS

30 TAC §§106.351 - 106.355

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.352. Oil and Gas Production Facilities.

Any oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquids recovery units, or gas sweetening and other gas conditioning facilities, including sulfur recovery units at facilities conditioning produced gas containing less than two long tons per day of sulfur compounds as sulfur are permitted by rule, provided that the following conditions of this section are met. This section applies only to those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface.

(1) Compressors and flares shall meet the requirements of §106.512 and §106.492 of this title (relating to Stationary Engines and Turbines, and Flares).

(2) Total emissions, including process fugitives, combustion unit stacks, separator, or other process vents, tank vents, and loading emissions from all such facilities constructed at a site under this section shall not exceed 25 tons per year (tpy) each of sulfur dioxide (SO_2), all other sulfur compounds combined, or all volatile organic compounds (VOC) combined; and 250 tpy each of nitrogen oxide and carbon monoxide. Emissions of VOC and sulfur compounds other than SO_2 must include gas lost by equilibrium flash as well as gas lost by conventional evaporation.

(3) Any facility handling sour gas shall be located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located.

(4) Total emissions of sulfur compounds, excluding sulfur oxides, from all vents shall not exceed 4.0 pounds per hour (lb/hr) and the height of each vent emitting sulfur compounds shall meet the following requirements, except in no case shall the height be less than 20 feet:

Figure: 30 TAC §106.352(4) (No change.)

(5) Before operation begins, facilities handling sour gas shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7 along with supporting documentation that all requirements of this section will be met. For facilities constructed under §106.353 of this title (relating to Temporary Oil and Gas Facilities), the registration is required before operation under this section can begin. If the facilities cannot meet this section, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) is required prior to continuing operation of the facilities.

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 15, 2000.

TRD-200005748
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER P. PLANT OPERATIONS

30 TAC §§106.371 - 106.376

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005749
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER Q. PLASTICS AND RUBBER

30 TAC §§106.391 - 106.396

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005750
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER R. SERVICE INDUSTRIES

30 TAC §§106.411 - 106.419

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005751
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER S. SURFACE COATING

30 TAC §§106.431 - 106.436

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.435. Classic or Antique Automobile Restoration Facility.

"Classic" or "Antique" vehicle restoration facilities (the terms "classic" and "antique" vehicle as determined by the Texas Department of Public Safety Vehicle Inspection and Registration Section under Texas Transportation Code, Chapter 502, §502.274 (concerning Classic Motor Vehicles) or §502.275 (concerning Certain Antique Vehicles; Offense)) qualify for this permit by rule if all of the following conditions of this section are met.

(1) All automobile body/chassis abrasive blast cleaning and coating operations shall be performed in a closed building or enclosure that is located at least 50 feet away from any property lines; or the facility shall be located a minimum of 300 feet from any recreational area or residence not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located, except that structures occupied by security or watch personnel may be located contiguously.

(2) Total abrasive usage shall be less than 100 pounds per hour, 500 pounds per day, and five tons per year.

(3) Combined clean-up material and paint usage, including solvents used for cleaning or thinning purposes, shall be less than five gallons per day and 100 gallons per year.

(4) All waste coatings, solvents, and spent automotive fluids shall be stored in covered containers and disposed of properly.

(5) The owner or operator of the restoration facilities shall maintain daily and annual records in sufficient detail to verify the usage limits in paragraphs (2) and (3) of this section. These records shall be maintained for a minimum of two years and made available at the request of personnel from the commission or any local pollution control program having jurisdiction.

(6) Facilities conducting vehicle repair and refinishing operations under §106.436 of this title (relating to Auto Body Refinishing Facility) may also conduct classic or antique vehicle restoration.

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 15, 2000.

TRD-200005752
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER T. SURFACE PREPARATION

30 TAC §§106.451 - 106.454

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005753
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER U. TANKS, STORAGE, AND LOADING

30 TAC §§106.471 - 106.478

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.476. Pressurized Tanks or Tanks Vented to Control.

Any tank or other container storing carbon compounds is permitted by rule, provided that the tank or container pressure is sufficient at all times to prevent vapor or gas loss to the atmosphere or the tank or container is equipped with a relief valve which directs all vapors or gases to an incinerator, boiler, or other firebox having a stationary flue or a waste gas smokeless flare system. The vapors or gases and any necessary fuel gas shall be mixed thoroughly upstream of the heater burner(s) or the flare tip such that the mixed gases have a minimum net or lower heating value of 200 British thermal units per cubic foot. The flare also shall meet the other requirements of §106.492 of this title (relating to Flares).

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 15, 2000.

TRD-200005754
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER V. THERMAL CONTROL DEVICES

30 TAC §§106.491 - 106.496

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.491. Dual Chamber Incinerators.

Dual-chambered incinerators which burn only waste generated on-site and which meet the conditions of this section are permitted by rule. Incinerators used in the processing or recovery of materials or to dispose of pathological waste as defined in §106.494 of this title (relating to Pathological Waste Incinerators), hospital waste, and/or infectious waste are not authorized by this section.

(1) The incinerator shall meet the following design requirements.

(A) The incinerator shall be equipped with an afterburner automatically controlled to operate with a minimum temperature of 1,400 degrees Fahrenheit and a minimum gas retention time of 0.5 seconds.

(B) The manufacturer's rated capacity (burn rate) shall be 500 pounds per hour or less.

(C) Stacks shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arrestors are not considered obstructions.

(D) Stack height shall be six feet above the peak of the highest building within 150 feet.

(2) The incinerator shall meet the following operational conditions.

(A) Before construction begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7.

(B) Fuel for the incinerator shall be limited to sweet natural gas, liquid petroleum gas, Number 2 fuel oil with less than 0.5% sulfur by weight, or electric power.

(C) This facility shall be used solely for the disposal of the following waste materials generated on-site: paper, wood, cardboard cartons, rags, garbage (animal and vegetable wastes as defined in Chapter 101 of this title (relating to General Rules)), and combustible floor sweepings; containing overall not more than 10% treated papers, plastic, or rubber scraps. Neither garbage content nor moisture content shall exceed 50% and noncombustible solids shall not exceed 10%.

(D) The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions.

(E) Incinerator owners and operators shall meet the monitoring, testing, reporting, and recordkeeping requirements found in Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter).

§106.492. Flares.

Smokeless gas flares which meet the following conditions of this section are permitted by rule:

(1) design requirements.

(A) The flare shall be equipped with a flare tip designed to provide good mixing with air, flame stability, and a tip velocity less than 60 feet per second (ft/sec) for gases having a lower heating value less than 1,000 British thermal units per cubic foot (Btu/ft^3) or a tip velocity less than 400 ft/sec for gases having a lower heating value greater than 1,000 Btu/ft^3.

(B) The flare shall be equipped with a continuously burning pilot or other automatic ignition system that assures gas ignition and provides immediate notification of appropriate personnel when the ignition system ceases to function. A gas flare which emits no more than 4.0 pounds per hour (lb/hr) of reduced sulfur compounds, excluding sulfur oxides, is exempted from the immediate notification requirement, provided the emission point height meets the requirements of §106.352(4) of this title (relating to Oil and Gas Production Facilities).

(C) A flare which burns gases containing more than 24 parts per million by volume (ppmv) of sulfur, chlorine, or compounds containing either element shall be located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the flare or the owner of the property upon which the flare is located.

(D) The heat release of a flare which emits sulfur dioxide (SO_2) or hydrogen chloride (HCl) shall be greater than or equal to the following values:

Figure: 30 TAC §106.492(1)(D) (No change.)

(2) operational conditions.

(A) The flare shall burn a combustible mixture of gases containing only carbon, hydrogen, nitrogen, oxygen, sulfur, chlorine, or compounds derived from these elements. When the gas stream to be burned has a net or lower heating value of more than 200 Btu/ft^3 prior to the addition of air, it may be considered combustible.

(B) A flare which burns gases containing more than 24 ppmv of sulfur, chlorine, or compounds containing either element shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7 prior to construction of a new flare or prior to the use of an existing flare for the new service.

(C) Under no circumstances shall liquids be burned in the flare.

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 15, 2000.

TRD-200005755
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

♦ ♦ ♦

SUBCHAPTER W. TURBINES AND ENGINES

30 TAC §106.511, §106.512

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

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 15, 2000.

TRD-200005762

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER X. WASTE PROCESSES AND REMEDIATION

30 TAC §§106.531 - 106.534

STATUTORY AUTHORITY

The amendments are adopted under 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; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere.

§106.532. Water and Wastewater Treatment.

Water and wastewater treatment units are permitted by rule, provided the following conditions of this section are met.

(1) The facility performs only the following functions:

(A) disinfection;

(B) softening;

(C) filtration;

(D) flocculation;

(E) stabilization;

(F) taste and odor control;

(G) clarification;

(H) carbonation;

(I) sedimentation;

(J) neutralization;

(K) chlorine removal;

(L) activated sludge treatment, anaerobic treatment, and associated control of gases from these treatments;

(M) aerobic oxidation/biodegration using oxygen or peroxide in the absence of nitrogen or other gas that would cause stripping of volaltile organic compounds (VOC) from the water;

(N) stripping VOC, ammonia, or other air contaminants from the water with air or other gas, provided the stripped gases are controlled with an abatement system that meets the requirements of §106.533(5) of this title (relating to Water and Soil Remediation). For ammonia or hydrogen chloride (HCl) or other acid gas emissions, abatement may include a water or caustic scrubbing system as a means of complying with this section. Final emissions of HCl resulting from combustion of chlorine or chlorine-containing compounds shall not exceed 0.1 pounds per hour;

(O) liquid phase separation of VOC and water in which:

(i) the sum of the partial pressures of all species of VOC in any sample is less than 1.5 psia; or

(ii) the separator is enclosed and emissions are vented through an emission abatement system meeting the requirements specified previously for stripped VOC and ammonia;

(2) Chlorine or sulfur dioxide (SO_2) shall be used only in containers approved by the United States Department of Transportation and emissions of chlorine or SO_2 from treatment of water or decontamination of equipment at any water treatment plant shall not exceed ten tons per year.

(3) The following shall not be permitted by rule under this section:

(A) gas stripping or aeration facilities where VOC or other air contaminants are stripped from water directly to the atmosphere;

(B) disposal facilities using land surface treatment;

(C) surface facilities associated with injection wells;

(D) cooling towers in which VOC or other air contaminants may be stripped to the atmosphere.

§106.533. Water and Soil Remediation.

Equipment used to reclaim or destroy chemicals removed from contaminated ground water, contaminated water condensate in tank and pipeline systems, or contaminated soil for the purpose of remedial action is permitted by rule, provided all the following conditions of this section are satisfied.

(1) Applicability shall pertain to soil and water remediation at the property where the original contamination of the ground water or soil occurred or at a nearby property secondarily affected by the contamination, but not to any soil or water treatment facility where soils or water are brought in from another property. Such facilities are subject to §116.110 of this title (relating to Applicability).

(2) For treating groundwater or soil contaminated with petroleum compounds, the total emissions of petroleum hydrocarbons shall not exceed 1.0 pound per hour (lb/hr), except that benzene emissions also must meet the conditions of §106.262(3) and (4) of this title (relating to Facilities (Emission and Distance Limitations). For purposes of this section, petroleum is considered to include:

(A) liquids or gases produced from natural formations of crude oil, tar sands, shale, coal and natural gas; or

(B) refinery fuel products to include fuel additives.

(3) For treating groundwater or soil contaminated with chemicals other than petroleum, emissions must meet the requirements of §106.262(2), (3), and (4) of this title. If the groundwater or soil is contaminated with both petroleum and other chemicals, the petroleum compound emissions must meet paragraph (2) of this section and the other chemical emissions must meet the requirements of §106.262(2), (3), and (4) of this title. The emission of any chemical not having a Limit (L) Value in Table 262 of §106.262 of this title is limited to 1.0 lb/hr.

(4) The handling and processing (screening, crushing, etc.) of contaminated soil and the handling and conditioning (adding moisture) of remediated soil shall be controlled such that there are no visible emissions with the exception of moisture.

(5) If abatement equipment is used to meet paragraphs (2) and (3) of this section, the equipment must satisfy one of the following conditions.

(A) The vapors shall be burned in a direct-flame combustion device (incinerator, furnace, boiler, heater, or other enclosed direct-flame device) operated in compliance with §106.493(2) and (3) of this title (relating to Direct Flame Incinerators (Previously SE 88)).

(B) The vapors shall be burned in a flare which meets the requirements of §106.492 of this title (relating to Flares (Previously SE 80)) and the requirements of 40 Code of Federal Regulations 60.18, which shall take precedence over §106.492 of this title in any conflicting requirements whether or not New Source Performance Standards apply to the flare.

(C) The vapors shall be burned in a catalytic oxidizer which destroys at least 90% of the vapors. An evaluation of oxidizer effectiveness shall be made at least weekly, using a portable flame or photoionization detector or equivalent instrument to determine the quantity of carbon compounds in the inlet and outlet of the catalytic oxidizer. Records of oxidizer performance shall be maintained in accordance with paragraph (7) of this section.

(D) The vapors shall be routed through a carbon adsorption system (CAS) consisting of at least two activated carbon canisters that are connected in series. The system shall meet the following additional requirements.

(i) The CAS shall be sampled and recorded weekly to determine breakthrough of volatile organic compounds (VOC). Breakthrough is defined as a measured VOC concentration of 50 parts per million by volume (ppmv) in the outlet of the initial canister. The sampling point shall be at the outlet of the initial canister, but before the inlet to the second or final polishing canister. Sampling shall be performed while venting maximum emissions to the CAS (example: during loading of tank trucks, during tank filling, during process venting).

(ii) A flame ionization detector (FID) shall be used for VOC sampling. The FID shall be calibrated prior to sampling with certified gas mixtures (propane in air) of 10 ppmv ± 2.0% and of 100 ppmv ± 2.0%.

(iii) When the VOC breakthrough is measured, the waste gas flow shall be switched to the second canister immediately. Within four hours of detection of breakthrough, a fresh canister shall be placed as the new final polishing canister. Sufficient fresh activated carbon canisters shall be maintained at the site to ensure fresh polishing canisters are installed within four hours of detection of breakthrough.

(iv) Records of the CAS monitoring maintained at the plant site shall include, but are not limited to, the following:

(I) sample time and date;

(II) monitoring results (ppmv);

(III) corrective action taken, including the time and date of the action; and

(IV) process operations occurring at the time of sampling.

(v) The registration shall include a demonstration that activated carbon is an appropriate choice for control of the organic compounds to be stripped.

(6) Before construction of the facility begins, the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7. The registration shall contain specific information concerning the basis (measured or calculated) for the expected emissions from the facility. The registration shall also explain details as to why the emission control system can be expected to perform as represented.

(7) Records required by applicable paragraphs of this section shall be maintained at the site and made available to personnel from the commission or any local agency having jurisdiction. These records shall be made available to representatives of the commission and local programs upon request and shall be retained for at least two years following the date that the data is obtained.

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 15, 2000.

TRD-200005761
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §116.10, General Definitions; §116.110, Applicability; §116.116, Changes to Facilities; §116.603, Public Participation in Issuance of Standard Permits; §116.620, Installation and/or Modification of Oil and Gas Facilities; §116.621, Municipal Solid Waste Landfills; §116.710, Applicability; §116.715, General and Special Conditions; §116.721; Amendments and Alterations; §116.722, Distance Limitations; §116.750, Flexible Permit Fee; and *new* §116.119, De Minimis Facilities or Sources; §116.1010, Applicability; §116.1011, Multiple Plant Permit Application; §116.1014, Application Review Schedule; §116.1015, General and Special Conditions; §116.1020, Modifications; §116.1021, Amendments and Alterations; §116.1040, Multiple Plant Permit Public Notice; §116.1041, Multiple Plant Permit Public Comment Procedures; §116.1050, Multiple Plant Permit Application Fee; §116.1060, Multiple Plant Permit Renewal; and §116.1070, Delegation. Sections 116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750 are proposed as revisions to the state implementation plan. Adopted *with changes* to the proposed text as published in the April 7, 2000, issue of the *Texas Register* are §§116.10, 116.119, 116.620, 116.621, 116.1010, 116.1011, and 116.1014. Sections 116.110, 116.116, 116.603, 116.710, 116.715, 116.721, 116.722, 116.750, 116.1015, 116.1020, 116.1021, 116.1040, 116.1041, 116.1050, 116.1060, and 116.1070 are adopted *without changes* and will not be published.

BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE ADOPTED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created 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. Senate Bill 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Finally, the commission was 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 voluntary emission reduction permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). Senate Bill 766 also amended TCAA, §382.0621(d) to require the increase of emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This adoption implements the elements of SB 766 relating to MPPs and de minimis criteria, and administrative revisions relating to exemptions from permitting and permits by rule. This adoption also corrects several typographical errors and incorrect references. Other elements of SB 766, including exemptions from permitting, permits by rule, and emission fees are being addressed in concurrent adoptions for new and amended sections in 30 TAC Chapter 101 and Chapter 106. Texas Clean Air Act, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP, which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Texas Clean Air Act, §382.05101, De Minimis Air Contaminants, allows the commission to develop, by rule, the criteria for establishing a de minimis level of air contaminants for facilities or groups of facilities below which a permit under TCAA, §382.0518 or §382.0519, a standard permit under TCAA, §382.05195, or a Permit by Rule under TCAA, §382.05196 is not required. Essentially, the commission may establish a level of emissions of air contaminants for certain facilities or sources below which no preconstruction authorization is needed.

SECTION BY SECTION DISCUSSION

The adopted changes to §116.10 modify existing definitions to reflect the recategorized air quality preconstruction permitting structure of the commission and make nonsubstantive corrections. Section 116.10(2), the definition of "Allowable emissions" is amended to reflect the new permits by rule, to clarify that §116.10(2)(C) pertains to "qualified" grandfathered facilities, and to reflect the current nomenclature for standard permit registration. Section 116.10(5), the definition of "Federally enforceable" is amended to include permit requirements under Subchapter C of Chapter 116 (Sources of Hazardous Air Pollutants), which was inadvertently excluded in an earlier rulemaking. Section 116.10(9), the definition of "Modification of existing facility" is amended to reflect TCAA, §382.003(9) by including reference to the new MPP.

The adopted changes to §116.110 include references to the new permits by rule and the new criteria for de minimis facilities or sources as mechanisms under which construction or modification of a facility can occur and remove the redundant reference to "an existing flexible permit" in §116.110(b). The amendments also add the new permit by rule to the existing prohibition on the use of Chapter 106 authorizations for construction or modification of affected sources under Subchapter C of this chapter, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63).

Amendments to §116.116(c)(4) and (5) correct a reference to a section which no longer exists. The correct reference is to §116.111(a)(2)(C), which discusses best available control technology. Amendments to §116.116(d) include the necessary references to the new permits by rule under Chapter 106, and rearranges some wording for consistency.

The new §116.119 establishes the criteria under which a facility would be considered de minimis and thus would not need a preconstruction authorization. The location of de minimis facilities may vary from small sites to large petrochemical facilities. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting would be an ineffective use of commission resources. There are four options for a facility or source to be considered de minimis. First, the commission will maintain a list of categories of facilities and sources that are considered de minimis. The list will not be incorporated into the rule, but will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin with copies in each of the commission's regional offices and on the commission's home page on the World Wide Web. The List of De Minimis Facilities or Sources is available on the commission's web page, and the commission will consider the criteria listed in the rule for amendment of the list. Any person may petition the executive director to amend the list, and the executive director will consider the following when amending the list to ensure that facilities or sources included on the list are de minimis: typical operating scenarios, typical design and location, types and rates of air contaminants emitted, engineering judgement and experience, and toxicological or health impacts. A 30-day public comment period will be provided to take comments on the proposed amendment to the list. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. If a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule). Second, facilities or sources which use no more than prescribed amounts of the following materials at a site are considered de minimis: cleaning and stripping solvents, coatings, dyes, bleaches, fragrances, and water-based surfactants or detergents. The amounts and materials in the rule were determined by input from the commission's regional offices and by engineering and toxicological review. These reviews include, in some cases, air dispersion modeling compared with the commission's effects screening levels (ESLs) using typical

design, location, and emission rates of facilities or sources using the materials. Third, de minimis facilities include those that are located inside a building and meet established emission rate caps, without the use of a control device, for individual and multiple substances. ESLs are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. The emission rate caps are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. Finally, an individual facility or source, or groups of facilities or sources, could also be determined by the executive director, on a case-by-case basis, to be de minimis considering: proximity to receptors, emission rates, engineering judgement and experience, and determination that no adverse toxicological effects would occur off-property. De minimis facilities or sources that are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute would no longer be considered de minimis and would be required to obtain authorization under this chapter or under Chapter 106, Permits by Rule.

The amendment to §116.603 corrects a reference to §39.411, Text of Public Notice, to the correct rule, §122.506, Public Notice for General Operating Permits. The reference to the public notice procedures, for general operating permits, Chapter 39, does not reduce the amount of notice but merely clarifies the notice process to be used.

The amendments to §116.620 and §116.621 reflect the new permits by rule and the revised title of Chapter 106.

The amendment to §116.710 corrects an incorrect reference. The correct reference is to §116.110(d), which discusses change in ownership.

Amendments to §§116.715, 116.721, and 116.750 reflect the new permits by rule and the revised title of Chapter 106.

The amendment to §116.722 corrects an incorrect reference. The correct reference is to §116.112, which discusses distance limitations.

New §116.1010 contains conditions defining applicability for facilities eligible for an MPP. Texas Clean Air Act, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. Texas Clean Air Act, §382.05194, Multiple Plant Permit, provides for an MPP which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Consequently, to be eligible for consolidation under an MPP, the plant sites to be permitted must be owned or operated by the same person or persons under common control.

The aggregate rate of emission of air contaminants cannot exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and property. The MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate, if the facility is grandfathered, or levels authorized in the most recent permit, if the facility is permitted. Consistent with commission practice, the highest historic rate will be determined one of two ways: 1) use of data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or 2) best engineering judgement in the absence of records, i.e., use of data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year. The executive director will use the emission rate data to establish emission rate limitations for each facility, the sum of which would not exceed the aggregate rate of emissions of air contaminants allowed under the MPP. This would be consistent with the commission's belief that the MPP would provide a flexible mechanism for permitting grandfathered facilities at multiple sites. Applicants will have the flexibility to over-control facilities at sites where the installation of controls is the most cost- effective. Once the rates are established in an MPP, permit holders would be required to amend or alter the permit, as appropriate, to move emissions from facility to facility or site to site.

Emission control equipment may not be removed except to maintain or upgrade existing controls or to reduce the impact of emissions. Applications for an MPP should be submitted on a Form PI-1M, Multiple Plant Permit Application.

New §116.1011 implements the requirement in TCAA, §382.05194(g) that the commission establish, by rule, the procedures for application and approval for the use of an MPP. Applications will have to include information to demonstrate that applicable conditions of §116.711, Flexible Permit Application, are met. This demonstration will ensure that any applicable federal requirements are complied with and that information is available to determine what type of monitoring or recordkeeping would be required. For grandfathered facilities that would be included in an MPP which is applied for prior to September 1, 2001, the applicant will be required to submit the information required for a VERP application under §116.811(3), Voluntary Emission Reduction Permit Application, solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit. For existing permitted facilities, applicants will need to provide a copy of the relevant permit. In addition, the commission requires information, as necessary, to verify that emissions of air contaminants from each facility would not adversely impact the public's health and physical property. Since the aggregate emission rate under an MPP will be determined by the sum of existing permitted emission rates and VERP emission rates, applications for grandfathered facilities filed after September 1, 2001 would need authorization under Subchapter B of this chapter prior to being included in an MPP. Finally, the applicant would be required to submit information necessary to calculate the cost of public notice under §116.1140, Multiple Plant Permit Public Notice, in order to determine the appropriate application fee under §116.1050, Multiple Plant Permit Application Fee.

New §116.1014 requires the commission to review MPP applications in accordance with §116.114, Application Review Schedule.

New §116.1015 allows for the inclusion of general and special conditions in MPPs and requires permit holders to comply with those general and special conditions, including special conditions which provide emission limitations for each facility and which specify the aggregate rate of emissions of air contaminants. Permit holders are also required to comply with any applicable conditions contained in §116.115, General and Special Conditions.

Texas Clean Air Act, §382.05194 contains no provisions for modification of facilities under a MPP, as "modification of existing facilities" is defined in §116.10(9), General Definitions. Therefore, new §116.1020 requires authorization under Subchapter B of this chapter before work is begun on the construction of the modification of any facility permitted under an MPP.

New §116.1021 provides a mechanism to amend MPPs as necessary to include revised general and special conditions that reflect changes that are modifications, changes in the method of control of emissions, or changes which will result in an increase in emissions. Permittees will submit a Form PI-1 to request an amendment, which would be subject to the review procedures referenced in §116.116(b), Changes to Facilities. An MPP alteration will be allowed in lieu of amendment for those changes which do not require an MPP amendment. Alterations which involve changes of a general or special condition, or affect control equipment performance requires prior commission approval. For alterations due to other changes, the executive director would be notified within ten days of the change, unless a different time frame is specified in the MPP. Any alteration request or notification should include information necessary to demonstrate that the change does not interfere with protection of the public's health and physical property. Changes to a facility which meet an authorization under Chapter 106 do not require amendment or alteration of an MPP, as long as the aggregate emissions cap or an individual emission limitation would not be exceeded.

To implement the requirements of TCAA, §382.05194(d), new §116.1040 requires the commission to publish notice of a proposed MPP in a newspaper of general circulation in the area(s) to be affected and in the *Texas Register*. If the MPP will have statewide effect, the notice will be published in the daily newspaper of largest circulation in Dallas and Houston. The notice will include relevant information required by §39.411, Text of Public Notice, and will be published at least 30 days before the commission issues the MPP. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4), Changes to Facilities, as multiple plant permit amendments would be reviewed under the existing procedures for permit amendments.

Texas Clean Air Act, §382.05194(e) requires the commission to hold a public meeting regarding proposed MPPs. Under new §116.1041, the commission will hold a public meting on the proposed MPP with notice of the meeting provided in the same notice required under §116.1040 at least 30 days before the meeting. Consistent with TCAA, §382.05194(f), the commission would respond to public comment received related to the issuance of the MPP at the same time the commission issues or denies the MPP. The response would be made available to the public and each commenter will be mailed a response. Finally, consistent with TCAA, §382.05194(h), the new section also states that applications for an MPP, amendments to an MPP, or revocation of an MPP which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001, meaning no contested case hearing would be allowed.

New §116.1050 requires a fee of $450 plus the estimated public notice cost for the permit for an application for an MPP. Texas Clean Air Act, §382.062(b) allows the commission to charge and collect a fee for MPPs. This fee would be applied toward recovering the cost of reviewing the MPP applications and the cost of publishing notice.

New §116.1060 requires MPPs to be renewed consistent with Subchapter D of this chapter.

Consistent with TCAA, §382.05194(i), new §116.1070 allows the commission to delegate to the executive director any authority regarding MPPs.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking 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. The amendments provide additional permitting options and remove the need for authorizations for de minimis facilities or sources. The MPP and de minimis options in the adopted amendments are voluntary and the amendments do not authorize any new emissions that will have an adverse effect on the environment. In addition, the amendments do not impose any additional regulatory requirements beyond those that currently exist. The new sections and amendments do not meet the definition of "major environmental rule" because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of the four applicability requirements of a "major environmental rule." Specifically, the new sections and amendments do not exceed a standard set by state or federal law, but are proposed under the Texas Health and Safety Code, concerning De Minimis Air Contaminants; and Multiple Plant Permits. The adopted amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The rules expand permitting and authorization options for new and existing facilities. The rules do not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore do not constitute a takings.

The amendments concerning de minimis criteria, establish parameters for emissions, below which, a facility or site would be considered de minimis and thus not required to obtain preconstruction authorization. The new procedures for obtaining an MPP provide an additional option for permitting of grandfathered facilities. The corrections cross-references and the insertion

of the new term "permits by rule" are administrative in nature. These actions are reasonably taken to fulfill an obligation mandated under state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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 Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), and 31 TAC §505.11(b)(2) relating to actions and rules subject to the 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 new sections relating to de minimis, multiple plant permits, and permits by rule, 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 action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations (CFR) because it does not authorize an emission rate in excess of that specified by federal requirements.

HEARING AND COMMENTERS

The commission held a public hearing on the proposal in Austin on May 4, 2000, and received eight comments during the public comment period which closed on May 8, 2000. The commission received comments from an individual, the United States Environmental Protection Agency (EPA), the Texas Compliance Advisory Panel (CAP), ExxonMobil Refining and Supply (ExxonMobil), the Society of the Plastics Industry, Inc. (SPI), the Association of Texas Intrastate Natural Gas Pipelines (ATINGP), the Texas Oil and Gas Association (TxOGA), Brown McCarroll & Oaks Hartline, L.L.P. (BMOH), and Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP). All commenters opposed specific parts of the proposal.

ANALYSIS OF TESTIMONY

United States Environmental Protection Agency asked if Chapter 321, Subchapter K, Concentrated Animal Feeding Operations, which is referred to in §116.110(a)(2)(B), is part of the Texas SIP and if not, does Texas intend to submit it as a SIP revision. EPA also requested that the commission complete the Subpart I checklist for Chapter 321, Subchapter K to document that sources subject to that chapter meet the provisions of 40 CFR Part 51, Subpart I.

Throughout its comments on the revisions to Chapter 116, EPA asked the commission to analyze the adopted rules to determine how specific sections of these rules meet the provisions of 40 CFR Part 51, Subpart I. The only sections that were submitted as a SIP revision were §§116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750. The sections concerning de minimis facilities and sources and multiple plant permits were not submitted as a SIP revision. Because of the ongoing concern with minor new source review authorizations being incorporated into operating permits as applicable requirements and the lack of finality of 40 CFR Part 70, the commission is not prepared to submit the provisions of Chapter 116 for de minimis facilities and sources and multiple plant permits as a SIP revision at this time. It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to these sections. If and when these sections are submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I.

Chapter 321, Subchapter K has not been submitted as a SIP revision because the rule has been replaced by Chapter 321, Subchapter B. The commission is not prepared to submit Chapter 321, Subchapter B as a SIP revision at this time. It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to Chapter 321, Subchapter B. If and when Chapter 321, Subchapter B is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding Chapter 321, Subchapter B.

An individual expressed opposition to a listing of de minimis facilities or sources and suggested that all facilities can be listed under permits by rule. There is no need for a de minimis list to subsidize large corporations with grandfathered facilities.

The rule has not been revised in response to this comment. Texas Clean Air Act, §382.05101 provides that the commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under §382.0518 or §382.0519, a standard permit under §382.05195, or a permit by rule under §382.05196 is not required. This new section of the TCAA recognizes for the first time that some facilities are, in fact, so small that they do not need to be authorized under the preconstruction permitting authority of the commission, including standard permits and permits by rule. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting and creation of permits by rule would be an ineffective use of commission resources. Some facilities, such as water heaters, are de minimis even if located at large corporations.

Compliance Advisory Panel commented that the de minimis policy will benefit small businesses by providing clarity regarding requirements for air authorizations. Compliance Advisory Panel expressed support for the use of a list of de minimis facilities and suggested expanding the list to include small, fully enclosed solvent recycling units. The inclusion of these recycling units is consistent with the commission's intent to encourage recycling, which results in lower air emissions. If included, it may be appropriate to specify operating characteristics such as capacity (i.e., no more than five gallons) or source of the solvents (i.e., normal operations of on-site processes). In order to actually encourage recycling, the requirements for demonstrating de minimis status must remain simple and clear so if complicated testing or recordkeeping is required, the incentive effect will be undermined.

The commission will work with the CAP following this adoption to determine the appropriateness of adding small, fully enclosed recycling units to the list of de minimis facilities.

United States Environmental Protection Agency requested the commission to complete a Subpart I checklist for §116.119, De Minimis Facilities or Sources, to demonstrate that this section satisfies the provisions of 40 CFR Part 51, Subpart I.

The referenced checklist appears to be a useful tool for the EPA to verify that proposed SIP revisions meet the requirements of 40 CFR Part 51, Subpart I. For the reasons stated previously, the commission is not submitting the revisions to §116.119 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to §116.119. If and when §116.119 is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding §116.119.

United States Environmental Protection Agency asked the commission to demonstrate that facilities which qualify as de minimis under §116.119(a) meet 40 CFR §51.160(a) and (e).

For the reasons stated previously, the commission is not submitting the new §116.119(a) as a SIP revision at this time, thus it is premature to determine how 40 CFR Part 51, Subpart I might apply to §116.119(a). If and when §116.119(a) is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding §116.119(a).

United States Environmental Protection Agency had the following questions concerning §116.119(c), which refers to the "List of De Minimis Facilities or Sources." What procedures will the commission follow to ensure that the sources on the list meet the requirements of 40 CFR Part 51, Subpart I? How will this be documented? The EPA asked whether these procedures should be incorporated into the SIP.

For the reasons stated previously, the commission is not submitting the new §116.119(c) as a SIP revision at this time. It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to §116.119(c). If and when §116.119(c) is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding §116.119(c).

United States Environmental Protection Agency asked whether the list and revisions to the list will be subject to public hearings and if not, asked how this satisfies 40 CFR §51.102, Public Hearings.

The opportunity for a public hearing is not being provided for the list or revisions to the list; however, the public comment procedures for revisions to the list are described in the adopted rule. The list will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web. Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary. In response to a comment, the commission has revised the rule to require notice of petitions to amend the list on the commission's home page on the World Wide Web. A 30-day public comment period will be provided to take comments on the proposed amendment to the list. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. The commission is not submitting the list as a SIP revision at this time; therefore, it is premature to determine how 40 CFR §51.102 might apply.

United States Environmental Protection Agency asked if the list and any revisions to the list will be submitted as a SIP revision and if not, asked the commission to explain how this satisfies 40 CFR §51.103, Submission of plans, preliminary review of plans.

For the reasons stated previously, the commission is not submitting the list as a SIP revision at this time; therefore, it is premature to determine how 40 CFR §51.103 might apply.

Brown McCarroll & Oaks Hartline objected to the use of the term "source" in reference to permitting requirements throughout the preamble to the proposed de minimis rule, noting that the commission has no jurisdiction to require preconstruction permitting of sources.

The commission agrees that new or modified "facilities" are required to obtain preconstruction permits. A facility is defined as "a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source ...." A source is defined as "a point of origin of air contaminants ...." In order to eliminate confusion regarding sources contained in facilities, and since the de minimis criteria do not impose, but rather clarify that the requirement for preconstruction authorization does not apply, the commission chose to err on the side of inclusiveness. This should in no way infer that the commission believes that it has the authority to permit a source that is not considered a facility or part of a facility.

Society of the Plastics Industry, Inc., commented that it supports the development of criteria for establishing de minimis levels of air contaminants, including the establishment of a list of de minimis facilities or sources. Society of the Plastics Industry, Inc., supports the use of alternative approaches to qualify for de minimis status. However, SPI is concerned about some of the proposed rates of material usage under §116.119(a)(2). Society of the Plastics Industry, Inc., believes that the rate of 50 gallons per year for cleaning and stripping solvents in §116.119(a)(2)(A) is unnecessarily low and will significantly restrict the number of small facilities that might otherwise qualify as de minimis. Similarly, the limit of 100 gallons per year of coatings (excluding plating materials) in §116.119(a)(2)(B) is too restrictive. Society of the Plastics Industry, Inc., asked the commission to consider higher throughput/material usage limits for these two categories.

The rule is not being revised in response to this comment. The amounts and materials in the rule were determined by input from the commission's regional offices, that are responsible for site inspections, and by engineering and toxicological review. In some cases, air dispersion modeling was compared with the commission's effects screening levels (ESLs), using typical design, location, and emission rates of facilities or sources using the materials. The usage rates for cleaning and stripping solvents and for coatings were set at levels which ensure no discernable or unacceptable impact to public health, given the one size fits all approach to de minimis and the fact that no additional limitations are included. Even if a facility does not meet the new de minimis criteria, the existing options for obtaining permits by rule or a permit are still available.

Society of the Plastics Industry, Inc., commented that the process to amend the list of de minimis facilities or sources under §116.119(c)(1), might allow a third party to petition the commission to delete a listed facility without adequate opportunity for the listed facility to respond to the petition. Society of the Plastics Industry, Inc., urges the commission to provide adequate notice and opportunity for response by the owners of listed facilities or sources should such a petition be submitted

by a third party. Brown McCarroll & Oaks Hartline suggested that the List of De Minimis Facilities or Sources be published periodically in the *Texas Register*, but not necessarily for public comment. This would create an official public notice of the list and would create an official record of what the list was at any given time. Additionally, BMOH suggested that deletions from the list should go through notice and comment so that those facilities potentially losing de minimis status can comment. They suggested adding a new subsection to provide for notice and comment for deletions from the list and to allow for a reasonable amount of time for the facility to apply for a permit or other authorization without the facility being in violation of the de minimis provisions.

The rule has been revised to provide that when amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will publish notice of the proposed amendment on the commission's home page on the World Wide Web and will allow 30 days for comments. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. The commission does not believe that it is necessary to publish the list in the *Texas Register* since the list, and all previous versions of the list, will be continuously available on the commission's home page. The rule has been revised to provide that if a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

Texas Industry Project expressed its support for the concept of de minimis facilities or sources. Texas Industry Project commented that SB 766 did not intend to limit activities at petrochemical facilities or other industries from gaining preconstruction authorization relief under the de minimis provision and that the commission should clarify this in the preamble. Texas Industry Project believes that certain activities at these facilities are appropriate for listing as de minimis such as fugitive components in inorganic service and emissions from the activation of fire suppression systems.

The commission agrees with TIP that certain activities at petrochemical facilities or other industries can be considered to be de minimis and has revised the preamble accordingly. If TIP wishes to submit a petition for the addition of fugitive components in inorganic service and emissions from the activation of fire suppression systems, the executive director can review those activities based on the criteria set forth in the rule and determine if they should be added to the list.

Texas Industry Project commented that the commission provided no basis for limiting the third option for being de minimis to activities located inside of a building. If the emission rate caps are met, a facility or source should be able to qualify as de minimis whether or not it is located inside a building. Texas Industry Project recommends that the words "located inside a building" be deleted from §116.119(a)(3).

The rule has not been revised in response to this comment. The emission rate caps in the third option are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. The commission limited the third option for being considered de minimis to those facilities located inside buildings because of the higher off-property impacts predicted from ground-level fugitive emissions that would result from facilities located outside of buildings. If facilities located outside of buildings are included in the third option, at a minimum, the corresponding emission rates would need to be adjusted downward. This would be necessary to ensure no discernable or unacceptable impact to public health, given the one size fits all approach to de minimis and the fact that no additional limitations, such as buffer zones, are included.

Brown McCarroll & Oaks Hartline suggested that the Texas Natural Resource Conservation Commission (TNRCC) clarify §116.119(a)(3) because the provision is unclear as to whether the emission rate cap applies to the facility, the building, or the site. Brown McCarroll & Oaks Hartline believes the emission rate cap should be applied to the facility.

The commission agrees the rule was not clear and has revised §116.119(a)(3) to include the term "sitewide."

Texas Industry Project expressed concern about the reference to ESLs in the regulation. Texas Industry Project believes that the reference to ESLs in §116.119(a)(3) is troublesome to the extent it implies that the ESL itself is a standard. In the past, the commission has recognized the danger of treating ESLs as standards and TIP does not believe that the reference is necessary and suggests instead that the regulation refer to the emission caps without reference to ESLs. Brown McCarroll & Oaks Hartline commented that the reference to ESLs in §116.119(a)(3) appears to establish ESLs as a rule and therefore the rules must reference a specific ESL list. Changes to the list would have a direct regulatory impact and must undergo rulemaking. The TNRCC should add a provision allowing a certain amount of time for a facility to come into compliance with a revised ESL, without the facility being in violation of the provision.

The commission disagrees that reference to the ESLs in the rule implies that they are standards or a rule. Effects screening levels are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. They are included as part of a mechanism to provide another option for being de minimis, i.e., a range of de minimis emission rates which ensure no discernable or unacceptable impact to public health. However, the commission does agree that revisions to the ESL list could potentially cause previously de minimis facilities to be subject to Chapter 116, Subchapter B. Therefore, it is appropriate to include a reference to a specific ESL list, and the rule has been revised accordingly. If and when the ESL list is revised, and that revision has a substantive effect on the range of ESLs referenced, §116.119 will be revised through rulemaking to include the date of the latest ESL list. The commission has not added, in this rulemaking, a future compliance date for facilities that would no longer be de minimis if an ESL is changed, but will consider that as part of future revisions to §116.119, if appropriate. However, the ESL list, itself, would not be subject to notice and comment as a part of that rulemaking.

Brown McCarroll & Oaks Hartline, L.L.P. supports the executive director being able to make case-by-case determinations for facilities to qualify as being de minimis. Brown McCarroll & Oaks Hartline, L.L.P. suggested that if the executive director's determination is based on §116.119(a)(4)(A), the commission should ensure that a change in the proximity to receptors would not nullify the de minimis determination. A facility should not lose its de minimis status due to factors beyond its control, especially in instances where there is no increase of emissions from the facility.

No changes have been made to the rule in response to this comment. At the time a case-by- case de minimis determination is made, the executive director will consider the likelihood that receptors could move into the area impacted by the de minimis facility. Therefore, the de minimis status of a facility, as determined by the executive director on a case-by-case basis, is unlikely to change. However, if a facility is later determined to be in violation of any commission rule, permit, order, or statute, including nuisance prohibitions, it would not longer be considered de minimis and must obtain the appropriate authorization. Therefore, a facility could lose its de minimis status due to factors beyond its control.

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.119(b) should be clarified such that an action taken by a third party not under a company's ownership and control that occurs after a de minimis determination does not automatically result in the source being in violation for failing to have a permit or other authorization. The commission should provide a phase-in period for the facility owner to submit an application or a registration without being in violation of the de minimis provisions.

No change has been made in response to this comment. The design of the de minimis criteria, e.g., list, usage rates, no buffer zones, make it unlikely for third party actions to alter a facility's de minimis status.

Texas Industry Project suggested that the commission review case-by-case de minimis determinations for similarities. If such exist, the commission should propose to add certain cases to the de minimis listing during future rule reviews or in combination with action by the executive director to amend the list pursuant to §116.119(c).

The commission agrees that if numerous similar case-by-case de minimis determinations are made, that they would be candidates for being added to the list.

An individual commented negatively regarding MPPs. Allowing large corporations with grandfathered facilities to pollute more in one community than another creates an environmental inequity and environmental justice issues. Some people will be exposed to more air pollution while others will breathe less pollution. The maximum reduction of air pollution should be required from each source.

The rule has not been revised in response to these comments. Texas Clean Air Act, §382.05194 provides for MPPs for existing facilities as long as the aggregate rate of emission of air contaminants does not exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and property. In addition, the MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate or levels authorized in the most recent permit. Because an MPP cannot authorize a facility to exceed its current emission limitations, no person should be exposed to more air pollution. In addition, the MPP process allows the commission the ability to determine the health impacts from existing facilities.

United States Environmental Protection Agency asked the commission to complete a Subpart I checklist for Subchapter J, Multiple Plant Permits, to demonstrate that the subchapter satisfies the provisions of 40 CFR Part 51, Subpart I.

The referenced checklist appears to be a useful tool for the EPA to verify that proposed SIP revisions meet the requirements of 40 CFR Part 51, Subpart I. However, the commission is not submitting the new MPP sections in Chapter 116 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to the MPP program. If and when the MPP program is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding the MPP program.

United States Environmental Protection Agency asked for the following to be clarified for the record: 1) What are the benefits of an owner or operator receiving an MPP? 2) Please describe any environmental benefits that will result from issuing MPPs. 3) Can an owner or operator use an MPP to facilitate trading of emissions between the individual sources under the MPP and if so, show that such trading meets EPA regulations and guidelines. 4) Can an owner or operator with an MPP use increases and decreases in emissions to perform netting under the permitting programs under §§116.150, 116.151, and 116.160? If so, how is this consistent with these provisions and with 40 CFR §51.165, Permit Requirements, and §51.166, Prevention of Significant Deterioration of Air Quality?

The primary benefit of an MPP for an owner or operator would be to allow for flexible permitting of existing grandfathered facilities by allowing them to over control certain existing facilities while allowing other existing facilities to retain the status quo. The aggregate rate of emissions from an MPP can be no more than the sum of existing permit allowables plus the levels that would be required under the VERP program for grandfathered facilities. The environmental benefit is that the aggregate emissions from grandfathered facilities under an MPP would have to reflect the emission levels required under the VERP program. The MPP program is not a trading program, but rather a program that provides a method for establishing levels of controls at existing facilities. Increases and decreases of emissions by an owner or operator with an MPP can be used for netting as long as the requirements under the commission's rules for nonattainment and PSD permitting are met. Section 116.1011(a)(1) and (2) requires demonstration that the requirements of §116.711 and §116.811 are met, which includes references to the nonattainment and PSD permitting requirements. Those programs are consistent with the federal provisions.

Association of Texas Intrastate Natural Gas Pipelines supports the effort to permit grandfathered facilities and to achieve emission reductions from those facilities through voluntary, incentive-based programs, and noted that ten-year old best available control technology (BACT) is a key element of this effort. Association of Texas Intrastate Natural Gas Pipelines is concerned about the development of ten-year old BACT for grandfathered engines at compressor stations since some of these engines are not retrofittable and while old, still have a remaining useful life. Association of Texas Intrastate Natural Gas Pipelines noted that it will continue to work with the commission to develop ten-year old BACT for these facilities in order to increase participation of this industry in the program.

The commission understands the concern and will also continue to work with ATINGP and other interested parties to determine ten-year old BACT for grandfathered engines.

Association of Texas Intrastate Natural Gas Pipelines commented that the proposed rules did not allow the shifting of emissions from facility to facility during operation. While emissions are allowed to be netted and shifted prior to MPP issuance, after issuance, each facility has an assigned emission rate.

Association of Texas Intrastate Natural Gas Pipelines believes that the original concept and intent of SB 766 was that MPPs would allow flexibility in operations and asks the commission to incorporate that concept into the rules.

The rule has not been revised in response to this comment. The commission agrees that emissions would be allowed to be shifted prior to MPP issuance, and that after issuance, each facility has an assigned emission rate. Texas Clean Air Act, §382.05194 specifically provides for flexibility on how to establish emission rates for facilities at multiple sites as long as an aggregate emission rate cap is not exceeded. However, §382.05194 does not address the issue of whether the MPP, once issued, would be static or dynamic. The commission is adopting the MPP rules providing for a static MPP, once issued, because of the complexity of ensuring compliance with a dynamic statewide MPP and ensuring that federal site-specific permitting requirements are not triggered. The commission believes the up front flexibility in shifting emission rates is consistent with SB 766.

Association of Texas Intrastate Natural Gas Pipelines asked that the amnesty provisions from the VERP program be extended to the MPP program. Regardless of whether a grandfathered facility is permitted under a VERP or an MPP, the facility should have the benefit of the amnesty program. The proposed rule imposes the same deadline for applications for VERPs and MPPs, thus the two programs are on the same track for implementation. Association of Texas Intrastate Natural Gas Pipelines believes that the commission has the authority to exercise its enforcement discretion to extend the amnesty provisions to the MPP program and requests that the commission do so.

Section 12 of SB 766 provides that the commission may not initiate an enforcement action against a person for failure to obtain a preconstruction permit under TCAA, §382.0518 that is related to the modification of a facility if, on or before August 31, 2001, the person files an application under TCAA, §382.0519, Voluntary Emissions Reduction Permit. The commission believes that the intent of this "amnesty" was to encourage the permitting of grandfather facilities under the VERP program. The commission recognizes the value in providing identical amnesty to grandfather facilities that might be permitted under any preconstruction permitting mechanisms provided for by the TCAA. Therefore, the commission agrees to allow the identical "amnesty" for facilities which apply for an MPP.

United States Environmental Protection Agency asked for clarification as to whether §116.1010(a)(1)(B) requires all grandfathered facilities to obtain a voluntary reduction permit under Subchapter H to qualify for an MPP.

Section 116.1010(a)(1)(B) does not require all grandfathered facilities to obtain a VERP. Section 116.1010(a)(1) provides the requirements for summing the aggregate cap. The aggregate cap is the summation of permit allowables for permitted units included in the MPP plus emissions that "would" be allowed under the VERP program for grandfathered facilities included in the MPP.

United States Environmental Protection Agency asked for an explanation of the §116.1010(b) reference to historic annual rate, in particular, the basis for allowing a source to document its historic annual rate which occurred prior to September 1, 1971. EPA asked how emissions prior to that date are relevant today. United States Environmental Protection Agency also asked if the commission considers subsequent regulations and other provisions which required reductions in emissions and if so, would the source ever emit at such a historical maximum emission rate (occurring before September 1, 1971) and still comply with applicable regulatory requirements. United States Environmental Protection Agency also asked for an explanation for why such a source should not base its historic annual rate on its current (or representative) utilization with consideration of all current air pollution control measures that are required and/or used by the source.

Section 116.1010(b) establishes the general limitation on the maximum rate that can be emitted by individual facilities included in an MPP, mirroring TCAA, §382.05194(b). The highest historic annual emission rate limitation would apply to facilities which do not have a permit, i.e., grandfathered facilities. Grandfathered facilities are those constructed or under construction prior to September 1, 1971. A facility may remain grandfathered from the state's new source review program as long as it is not modified, as that term is defined in TCAA, 382.003.Using the highest historic annual emission rate is consistent with commission practice for determining maximum allowable emissions from grandfathered facilities. However, the commission does consider subsequent regulatory requirements when establishing allowable emission rates. The highest historic annual emission rate is the highest emission rate that a facility under an MPP would be allowed to emit, in general. However, other regulatory requirements could result in a lower allowable emission rate being placed in the permit. No TNRCC permit may allow a facility to avoid compliance with other regulatory requirements.

With regard to §116.1010(b)(2), EPA asked if the commission has guidelines or provisions for determining the appropriate operation year that is to be used to determine the historic annual rate and if so, why has that guidance not been incorporated into the regulation for inclusion in the SIP. United States Environmental Protection Agency also asked for an explanation for why the commission is not proposing such guidelines or provisions and including them in the SIP.

The adopted rule contains the provisions for determining the highest historic annual emission rate. Beyond the provisions in the regulation, no formal guidelines or provisions for determining the appropriate operation year for the historic annual rate have been developed. The application of these provisions is straightforward (i.e., based on emissions data) and the commission does not see a need to develop elaborate guidance since the establishment of a highest historic annual rate is case-by-case specific. The commission is not submitting the new MPP sections in Chapter 116 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to the MPP program. If and when the MPP program is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I.

Concerning §116.1010(c), EPA asked the commission to address whether the removal, disabling, maintenance, or upgrading of emission control equipment should be evaluated to demonstrate that such action does not render the unit less environmentally beneficial, citing to 40 CFR §§51.165(a)(1)(v)(C)(8), 51.166(b)(2)(iii)(h), and 60.14(e)(5).

As stated previously, the commission is not submitting the MPP program as a SIP revision at this time. Therefore, it is premature to determine how the referenced sections of the 40 CFR might apply. Nonetheless, the intent of §116.1010(c), which mirrors TCAA, §382.05194(c), is that control equipment should not be removed unless there is an environmental benefit.

ExxonMobil commented that §116.1010(a)(1)(A) should be deleted and §116.1010(a)(1)(B) should be revised. The applicability limitations in these two clauses seems to limit existing permitted facilities from fully participating in the MPP proposal. It was ExxonMobil's interpretation of the CARE Committee recommendation that the use of MPPs was not limited to grandfathered facilities and that a group of facilities which in aggregate meet the appropriate level of emission control (BACT or ten-year old BACT) and that are geographically located in a single air shed, should be able to bubble emissions among those facilities. The CARE recommendations did not limit this to only grandfathered facilities and it did not place a limit on current emission limits in facility permits. An owner or operator with several facilities in a single air shed should be allowed to obtain an MPP for any combination of facilities, all previously permitted, all grandfathered or a combination. The owner or operator should be able to make decisions regarding the operating rates and installation of new emission control equipment among those facilities as long as the total emissions remain below the aggregate emission levels.

The rule has not been revised in response to this comment. The commission agrees that MPPs can include a combination of existing grandfathered and permitted facilities, and is clarifying that here. The aggregate emission rate defined in §116.1010(a)(1) is the total, or sum, of the permitted rates in §116.1010(a)(1)(A) and the grandfathered rates in §116.1010(a)(1)(B).

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.1010(a)(1)(B) be split into two subsections. Subparagraph (B) "or for facilities...Permits" should be stricken from the provision because facilities authorized under Subchapter H are already covered adequately by subsection (a)(1)(A). The rule has not been revised in response to this comment. The three types of facilities, previously permitted, unpermitted grandfathered, and facilities with VERPs, are consistent with the statutory provisions in TCAA, §382.05194(a)(1)(A) and (B). The commission has interpreted "previously permitted" to be those facilities that have been permitted under the provisions of TCAA, §382.0518 prior to the passage of SB 766, and do not include those facilities permitted under Subchapter H.

ExxonMobil requested clarification of the requirement in §116.1010(b) and suggested revised wording. ExxonMobil believes that this requirement could be interpreted to place either a highest or upper limit on the allowable authorization or a lowest limit on the authorization. Will a permit writer choose the higher or the lower of these two options? Texas Oil and Gas Association commented that the intent of §116.1010(b) is not clear and requested clarification that the intent is to cap emissions from individual facilities included in the MPP at the higher of each facility's highest historic annual rate or the levels in the facility's most recent permit. Texas Industry Project commented that it is not clear that §116.1010(b)(1) applies only to grandfathered facilities and that if it is not the intent of the commission to limit use of the §116.1010(b)(1) to grandfathered facilities that the rule should be clarified. Texas Industry Project offered language accordingly.

Section 116.1010(b) and (b)(1) have been revised to clarify that if a facility is permitted, the rate would be the emission rate allowed in its most recent permit, whether or not that rate is higher or lower than the highest historic annual emission rate. If a facility is grandfathered, the highest historic annual emission rate will be used.

Brown McCarroll & Oaks Hartline, L.L.P. suggested amending §116.1010(b)(2) to delete the phrase "and agreed upon by the executive director."

The rule has not been revised in response to this comment. The commission does not believe it is appropriate to remove the executive director from the determination of highest historic annual rate.

Texas Oil and Gas Association commented that it believes §116.1010(a) clearly provides that the intent of the MPP is to permit construction or modification of existing facilities at multiple plant sites with specified caps on the aggregate rate of emission of air contaminants, provided there is no indication that the emissions will contravene the intent of the TCAA.

Texas Clean Air Act, §382.051(b)(6) authorizes the commission to issue an MPP for existing facilities. Texas Clean Air Act, §382.051(a)(2) authorizes the commission to issue a permit to "operate" an existing facility under a VERP. The commission believes that the primary intent of the MPP is to provide a streamlined, flexible mechanism for the permitting of grandfathered facilities at multiple plant sites. Given that TCAA, §382.05194 does not provide any mechanism for construction or modification of facilities, the commission disagrees that the intent of the MPP is to permit construction of new facilities or modification of existing facilities.

Texas Oil and Gas Association commented that the intent was that the MPP should be modeled after the flexible permit program, which is consistent with the commission's recommendations to the legislature in the "Voluntary Emissions Reduction Plan for the Permitting of Existing Significant Sources Required by House Bill 3019," August 19, 1998. That report had a recommendation for an MPP modeled after the flexible permit program with an ability to allow trading of emissions between sites.

The majority of the CARE Committee recommended that the agency examine the possibility of developing a multiple plant permit modeled after the current flexible permit program, but covering multiple sites. Texas Clean Air Act, §382.05194 specifically provides for flexibility on how to establish emission rates for facilities at multiple sites as long as an aggregate emission rate cap is not exceeded. However, §382.05194 does not address the issue of whether the MPP, once issued, would be static or dynamic. The commission is adopting the MPP rules providing for a static MPP, once issued, because of the complexity of ensuring compliance with a dynamic state-wide MPP and ensuring that federal site-specific permitting requirements are not triggered. The commission believes the up front flexibility in shifting emission rates is consistent with SB 766.

Texas Industry Project suggests that §116.1010(a)(2) be revised to delete the undefined phrase "no indication."

The commission agrees and has revised the rule accordingly.

Association of Texas Intrastate Natural Gas Pipelines commented that §116.1011(a)(2) requires an applicant for an MPP to provide information required by §116.811. Section 116.811 has the application requirements for a VERP and includes the requirement for ten-year old BACT for attainment areas and

GACT for nonattainment areas. Association of Texas Intrastate Natural Gas Pipeline suggested that an applicant for an MPP would not be required to add control technology, rather a component of the aggregate emission rate for grandfathered facilities covered by an MPP would be the level of emissions that would be achieved had control technology under the VERP program been used. Association of Texas Intrastate Natural Gas Pipelines asked that its suggested language be added to §116.1011(a)(2) to clarify that a grandfathered facility that elects to be covered by an MPP does not have to add control technology to be permitted. Texas Industry Project was also concerned that the provision could be construed to incorporate substantive requirements such as retrofitting to ten-year old BACT, and requested clarification of the intent of §116.1010(a)(2) and the rule language.

The commission agrees, and has added language to §116.1011(a)(2) and to the preamble to clarify that the VERP control technology information is needed solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the MPP.

Association of Texas Intrastate Natural Gas Pipelines also asked for a clarification to §116.1011(b) by adding the phrase "for a multiple plant permit" between the words "apply" and "prior."

The commission agrees and has revised the rule accordingly.

Brown McCarroll & Oaks Hartline, L.L.P. commented that §116.1011(b) should be stricken because TCAA, §382.05194(a)(1)(B) does not require a grandfathered facility which does not apply prior to September 1, 200,1 to first obtain a permit under Subchapter B before it is eligible to be included in an MPP. The commission is attempting to deprive facilities of what the statute provides in §382.0519 and §382.05194(a)(1)(B). Section §116.1011(b) has the effect of limiting total MPP allowable rates by requiring grandfathered facilities to obtain a New Source Review Permit. Senate Bill 766 does not authorize the commission to impose this limitation, and in fact, it specifically allows grandfathered facilities to be included in an MPP, but limits allowable emissions to those that would be allowed under Subchapter H.

The rule has not been revised in response to this comment. The commission agrees that if a VERP has been obtained for a facility, that facility would be able to obtain an MPP on or after September 1, 2001, without obtaining a new source review permit. Once a VERP is obtained those facilities are no longer considered grandfathered. Therefore, §116.1011(b) would only apply to those grandfathered facilities that did not take advantage of the VERP program. Texas Clean Air Act, §382.05194(a)(1)(B) provides that the emission rate to be used for calculating the aggregate rate from existing unpermitted facilities will be "the rates that would be authorized" under the VERP program. Since the VERP program expires on September 1, 2001, the commission does not believe the statute contemplated extending the benefits of the VERP program after that date.

During review of the proposed rule, staff discovered an incorrect citation in §116.1014. That section has been revised to correctly refer to §116.114 instead of §116.614.

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.1020 be amended so that "not within the scope of an MPP" be inserted directly after "facility." This would provide the flexibility that the MPP was intended to create since preconstruction authorization or modification would not be required under a MPP if the modification would not result in an increase in either maximum historical emission rates or the maximum allowable emissions under the permit.

The rule has not been revised in response to this comment. The definition of "modification" in TCAA, §382.003(9)(F) excludes changes within the scope of an MPP from being defined as a modification. Therefore, §116.1020 does not apply to changes that are within the scope of an MPP.

ExxonMobil believes that the provisions of §116.1021(a) place a restriction on applicants for an MPP in that all representations in the MPP application are considered enforceable conditions of the subsequently issued permit. ExxonMobil is concerned that applicants will end up in an enforcement "Catch 22" because sometimes the final permit may mandate activity, conditions, or restrictions that are different from the applicant's original representations. They suggested that the automatic incorporation of application representations into a permit without actual inclusion of those representations could place some facilities at risk of an unintentional violation of their permit.

The rule has not been revised in response to this comment. During the review of the permit application, correspondence is often exchanged between the applicant and the commission that results in revisions to the information contained in the application. The final permit reflects all of the representations in an application, including those that were refined during the review process.

Texas Industry Project requested that the commission clarify that proposed §116.1021(a) is not intended to preclude qualified grandfathered facilities from making changes if it is determined that those changes are consistent with §116.116(e).

The commission agrees that qualified facilities which are at the same plant site are not precluded from making changes consistent with §116.116(e) as long as the multiple plant permit is altered accordingly. However, §116.116(e) is not intended to allow for the movement of emissions from one plant site to another.

Brown McCarroll& Oaks Hartline, L.L.P. expressed its support of §116.1021(c)(1), but opposed §116.1021(c)(2). Section §116.1021(c)(2) acts as a disincentive to obtain an MPP because facilities or sites authorized under other mechanisms are free to avail themselves of permit by rule authorization. The commission provided no rationale for this provision so BMOH had no choice but to oppose it.

The rule has not been revised in response to this comment. Texas Clean Air Act, §382.05194(a) and (b) clearly specifies how the aggregate cap and individual facility emission limitations are to be derived. The commission believes that it would be inappropriate to allow the use of permits by rule to exceed the cap or individual facility emission limitations. In addition, the language in §116.1021(c)(2) is consistent with the limitations of the flexible permitting program under Subchapter G which also employs the concept of an aggregate cap and individual limitations.

United States Environmental Protection Agency asked how §116.1040 and §116.1041 meet the provisions of 40 CFR §51.161, Public Availability of Information and requested that this be addressed when completing the Subpart I checklist.

The commission is not submitting new §116.1040 and §116.1041 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part §51.161 might apply. If and when §116.1040 and §116.1041 are submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part §51.161. The commission will

continue to work with the EPA to address any specific concerns regarding §116.1040 and §116.1041.

An individual commented that the fee for MPPs is ridiculous and suggested that far more is spent by the commission on agency personnel, materials, and resources. Polluters should be required to pay and large industrial corporations should not be subsidized.

The rule has not been revised in response to this comment. The application fee for new or modified facilities is 0.15% of the capital cost of a project with a $450 minimum fee and a $75,000 maximum fee. This fee structure has proven adequate to cover the cost of implementing the NSR permitting program, historically. Because the MPP covers existing facilities, as opposed to new or modified facilities, the commission expects the demand on agency personnel and materials to be minimal.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendment is also adopted 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; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

§116.10. General Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).

(2) Allowable emissions--The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title.

(A) Permitted facility--For a facility with a permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized under Chapter 106 of this title (relating to Permits by Rule).

(B) Facility permitted by rule--For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8 form.

(C) Qualified grandfathered facility--For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) Standard permit facility--For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration to use the standard permit.

(E) Special exemption facility--For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

(3) Best available control technology (BACT)--BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

(4) Facility--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(5) Federally enforceable--All limitations and conditions which are enforceable by the EPA, including:

(A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR 60 and 61);

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63));

(C) requirements within any applicable state implementation plan (SIP);

(D) any permit requirements established under 40 CFR §52.21;

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program; or

(F) any permit requirements established under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6) Grandfathered facility--Any facility that is not a new facility since it was constructed prior to the permit requirements of this chapter.

(7) Lead smelting plant--Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(8) Maximum allowable emissions rate table (MAERT)--A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

(9) Modification of existing facility--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(10) New facility--A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) New source--Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) Nonattainment area--A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(13) Public notice--The public notice of application for a permit as required in this chapter.

(14) Qualified facility--An existing facility that satisfies the criteria of either paragraph (9)(E)(i) or (ii)of this section.

(15) Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

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 15, 2000.

TRD-200005728
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §§116.110, 116.116, 116.119

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments and new section 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; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

§116.119. De Minimis Facilities or Sources.

(a) Facilities or sources that meet the conditions of one or more of the paragraphs of this subsection are considered by the commission to be de minimis, which means that registration or authorization prior to construction is not required:

(1) categories of facilities or sources included on the list entitled "De Minimis Facilities or Sources;"

(2) facilities or sources at a site which, in combination, use the following materials at no more than the rate prescribed in subparagraphs (A) - (F) of this paragraph:

(A) cleaning and stripping solvents, 50 gallons per year;

(B) coatings (excluding plating materials), 100 gallons per year;

(C) dyes, 1,000 pounds per year;

(D) bleaches, 1,000 gallons per year;

(E) fragrances (excluding odorants), 250 gallons per year;

(F) water-based surfactants/detergents, 2,500 gallons per year;

(3) facilities or sources located inside a building at a site which meet the following sitewide emission rate caps based on the July 19, 2000 Effects Screening Levels (ESL) list without the addition of control devices, as defined in §101.1 of this title (relating to Definitions).

Figure: 30 TAC §116.119(a)(3)

(4) any individual facility, source, or group of facilities or sources which the executive director determines to be de minimis based upon:

(A) proximity to receptors;

(B) rate of emission of air contaminants;

(C) engineering judgment and experience; and

(D) determination that no adverse toxicological or health effects would occur off property.

(b) De minimis facilities or sources at a site which are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute within the commission's jurisdiction, will no longer be considered de minimis and must obtain registration or authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(c) The "List of De Minimis Facilities or Sources" will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web.

(1) Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary.

(2) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will consider, at a minimum, the following:

(A) typical operating scenarios;

(B) typical design and location;

(C) the types and rates of air contaminants emitted;

(D) engineering judgment and experience; and

(E) toxicological or health impacts.

(3) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will publish notice of the proposed amendment on the commission's home page on the World Wide Web and will allow 30 days for comments. If a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

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

Filed with the Office of the Secretary of State on August 15, 2000.

TRD-200005729
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Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §§116.603, 116.620, 116.621

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also adopted 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; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) Venting or flaring more than 0.3 long tons per day of total sulfur shall not be allowed.

(2) No facility shall be allowed to emit total uncontrolled emissions of sulfur compounds, except sulfur dioxide (SO_2), from all vents (excluding process fugitives emissions) equal to or greater than four pounds per hour unless the vapors are collected and routed to a flare.

(3) Any vent, excluding any safety relief valves that discharge to the atmosphere only as a result of fire or failure of utilities, emitting sulfur compounds other than SO_2 shall be at least 20 feet above ground level.

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines), except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule).

(5) Total Volatile Organic Compound (VOC) emissions from a natural gas glycol dehydration unit shall not exceed ten tons per year (tpy) unless the vapors are collected and controlled in accordance with subsection (b)(2) of this section.

(6) Any combustion unit (excluding flares, internal combustion engines, or natural gas turbines), with a design maximum heat input greater than 40 million British thermal units (Btu) per hour (using lower heating values) shall not emit more than 0.06 pounds of nitrogen oxides per million Btu.

(7) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than ten tpy, but less than 25 tpy, unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(8) No facility which is 500 feet or more from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(9) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(10) No facility shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 40 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H_2S or SO_2 emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Air Quality Rules) are exempt from these limitations.

(12) Flares shall be designed and operated in accordance with 40 Code of Federal Regulations (CFR), Part 60.18 or equivalent standard approved by the commission, including specifications of minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring. If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible. An infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes. An automatic ignition system may be used in lieu of a continuous pilot.

(13) Appropriate documentation shall be submitted to demonstrate that compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the FCAA, Parts C and D, and regulations promulgated thereunder, and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit or a review under Subchapter C of this chapter is required.

(14) Documentation shall be submitted to demonstrate compliance with applicable New Source Performance Standards (NSPS, 40 CFR Part 60).

(15) Documentation shall be submitted to demonstrate compliance with applicable National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR Part 61).

(16) Documentation shall be submitted to demonstrate compliance with applicable maximum achievable control technology

standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed in 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)).

(17) New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; and Control of Air Pollution from Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H_2S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(18) Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Control), unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) For internal floating roofs, mechanical shoe primary seal or liquid-mounted primary seal or a vapor-mounted primary with rim-mounted secondary seal shall be used.

(B) Mechanical shoe or liquid-mounted primary seals shall include a rim-mounted secondary seal on all external floating roofs tanks. Vapor-mounted primary seals will not be accepted.

(C) All floating roof tanks shall comply with the requirements under §115.112(a)(2)(A) - (F) of this title (relating to Control Requirements).

(D) In lieu of a floating roof, tank emissions may be routed to:

(i) a destruction device such that a minimum VOC destruction efficiency of 98% is achieved; or

(ii) a vapor recovery system such that a minimum VOC recovery efficiency of 95% is achieved.

(E) Independent of the permits by rule listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) The VOC emissions from a natural gas glycol dehydration unit shall be controlled as follows.

(A) If total uncontrolled VOC emissions are equal to or greater than ten tpy, but less than 50 tpy, a minimum of 80% by weight minimum control efficiency shall be achieved by either operating a condenser and a separator (or flash tank), vapor recovery unit, destruction device, or equivalent control device.

(B) If total uncontrolled VOC emissions are equal to or greater than 50 tpy, a minimum of:

(i) 98% by weight minimum destruction efficiency shall be achieved by a destruction device or equivalent; or

(ii) 95% by weight minimum control efficiency shall be achieved by a vapor recovery system or equivalent.

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10,000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency representatives, the EPA, or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non- accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC

service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk- through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is found which exceeds a VOC concentration greater than 500 ppmv for all components except pumps and compressors and greater than 2,000 ppmv for pumps and compressors above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.044 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 psi (five Kpa) below ambient pressure, these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by agency representatives, the EPA, or any air pollution control agency having jurisdiction. All piping and valves two inches nominal size and smaller are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his or her discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non- accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk- through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%,

an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(K) A directed maintenance program shall be used and consist of the repair and maintenance of VOC fugitive emission components assisted simultaneously by the use of an approved gas analyzer such that a minimum concentration of leaking VOC is obtained for each component being maintained. Replaced components shall be remonitored within 30 days of being placed back into VOC service.

(3) For owners and operators who are subject to the applicable parts of subsection (a)(11) of this section, auditory and visual checks for SO_2 and H_2S leaks within the operating area shall be made every day. Immediately, but no later than eight hours upon detection of a leak, operating personnel shall take the following actions:

(A) isolate the leak; and

(B) commence repair or replacement of the leaking component; or

(C) use a leak collection/containment system to prevent the leak until repair or replacement can be made if immediate repair is not possible.

(d) Approved test methods.

(1) An approved gas analyzer used for the VOC fugitive inspection and repair requirement in subsection (c) of this section, shall conform to requirements listed in 40 CFR §60.485(a) and (b).

(2) Tutweiler analysis or equivalent shall be used to determine the H_2S content as required under subsections (a) and (e) of this section.

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Office of Compliance and Enforcement 45 days prior to sampling for approval of sampling protocol. The appropriate regional office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Office of Compliance and Enforcement personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Office of Compliance and Enforcement.

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H_2S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Office of Compliance and Enforcement office in Austin, and shall be capable of detecting and alarming at H_2S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A) - (C) of this section within eight hours of detection of a leak.

(2) The results of the VOC leak detection and repair requirements shall be made available to the executive director or any air pollution control agency having jurisdiction upon request. Records, for all components, shall include:

(A) appropriate dates;

(B) test methods;

(C) instrument readings;

(D) repair results; and

(E) corrective actions. Records of flange inspections are not required unless a leak is detected.

(3) Records for repairs and replacements made due to inspections of H_2S and SO_2 components shall be maintained.

(4) Records shall be kept for each production, processing, and pipeline tank battery or for each storage tank if not located at a tank battery, on a monthly basis, as follows:

(A) tank battery identification or storage tank identification, if not located at a tank battery;

(B) compound stored;

(C) monthly throughput in barrels/month; and

(D) cumulative annual throughput, barrels/year.

(5) A plan shall be submitted to show how ongoing compliance will be demonstrated for the efficiency requirements listed in subsection (b)(1)(D) of this section. The demonstration may include, but is not limited to, monitoring flowrates, temperatures, or other operating parameters.

(6) Records shall be kept on at least a monthly basis of all production facility flow rates (in standard cubic feet per day) and total sulfur content of process vents or flares or gas processing streams. Total sulfur shall be calculated in long tons per day.

(7) Records shall be kept of all ambient property line monitor alarms and shall include the date, time, duration, and cause of alarm, date and time of initial on-site inspection, and date and time of corrective actions taken.

(8) All required records shall be made available to representatives of the agency, the EPA, or local air pollution control agencies upon request and be kept for at least two years. All required records shall be kept at the plant site, unless the plant site is unmanned during business hours. For plant sites ordinarily unmanned during business hours, the records shall be maintained at the nearest office in the state having day-to-day operations control of the plant site.

§116.621. Municipal Solid Waste Landfills.

A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(1) An MSWLF and associated waste acceptance and handling facilities which comply with §116.610 of this title (relating to Applicability), except §116.610(a)(1) of this title; §116.611 of this title (relating to Registration Requirements); §116.614 of this title (relating to Standard Permit Fees); and §116.615 of this title (relating to General Conditions) qualify for a standard permit.

(2) Separate permit authorization under Subchapter B of this chapter (relating to New Source Review Permits) must be obtained for the following:

(A) industrial solid waste solidification/stabilization facilities;

(B) outdoor burning;

(C) waste incineration other than that used to control landfill gas emissions;

(D) landfill cells in which any regulated quantities of hazardous waste will be placed;

(E) MSWLF and MSW facilities with passive collection systems as defined in 40 Code of Federal Regulations (CFR), §60.751; and

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration review), Part D (nonattainment review) and regulations promulgated thereunder, or is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(3) Registration shall include, in addition to the information required by §116.611 of this title, an initial design capacity report in accordance with 40 CFR, §60.757(a)(2).

(4) The permit holder shall comply with the air emissions standards as specified in 40 CFR Part 60, Subpart WWW, with the following additions and changes.

(A) The gas collection and control system (GCCS) shall conform with specifications for active collection systems as specified in 40 CFR, §60.759.

(B) The GCCS shall be designed to control nonmethane organic compounds (NMOC) gas emissions in one or more of the following ways by routing the total collected gas to:

(i) an open flare with a minimum height of 30 feet and which satisfies all of the requirements of Chapter 106, Subchapter A of this title (relating to General Requirements) and §106.492 of this title (relating to Flares), except that registration using Form PI-7 or PI-8 shall not be required;

(ii) a control device (such as an enclosed flare) with a minimum vent release height of 30 feet and which reduces the total collected NMOC gas emissions by 98%, or to less than 20 parts per million by volume (ppmv), as hexane;

(iii) a gas treatment system that processes the collected gas for subsequent use or sale. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of clause (ii) of this subparagraph;

(iv) gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that satisfy all of the requirements of Chapter 106, Subchapter A of this title and §106.512 of this title (relating to Stationary Engines and Turbines), except that registration using Form PI-7 or PI-8 shall not be required; or

(v) boilers, heaters, or other combustion units, but not including stationary internal combustion engines or turbines, that satisfy all of the requirements of Chapter 106, Subchapter A of this title and §106.183 of this title (relating to Boilers, Heaters, or Other Combustion Devices).

(C) The active GCCS may be capped or removed only if, in addition to the requirements listed in 40 CFR, §60.752(b)(2)(v), the MSWLF is permanently closed under §§330.250 - 330.256 of this title (relating to Closure and Post-closure).

(5) MSWLF owners and operators shall monitor and control particulate matter as follows.

(A) All material handling and transport operations shall be conducted in a manner so as to minimize any fugitive particulate matter emissions.

(B) Roads and other areas subject to vehicle traffic shall be paved and cleaned, watered, or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(C) During excavation, MSWLF cells shall be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I (EPA Requirements for Quality Assurance Project Plans, dated February 1995) and the "TNRCC Sampling Procedures Manual," Chapter 11 (dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

(7) GCCS components (compressor seals, pipeline valves, pressure relief valves in gaseous service, flanges, and pump seals) at an MSWLF or MSW facility, where the total of all estimated uncontrolled fugitive emissions from all components is greater than ten tons per year, shall be inspected and maintained under the requirements of §116.620(c)(1)(A) - (J) of this title (relating to Installation and/or Modification of Oil and Gas Facilities), with the following changes and additions.

(A) Instead of the definition in §116.620(c)(1)(A) of this title, a leak shall be defined as the escape of gas with a total organic compound concentration greater than or equal to 10,000 ppmv above background as methane; or the dripping or exuding of process fluid based on sight, smell, or sound.

(B) In §116.620(c)(1)(C) of this title, new and reworked underground pipelines containing NMOC that are located within the gas collection area and are in continuous vacuum service may contain buried valves.

(C) In §116.620(c)(1)(E) of this title, high density polyethylene pipe connections may be fused or flanged.

(D) In addition to those components exempted in §116.620(c)(1)(A) - (J) of this title, the following additional components are exempt from the maintenance and inspection protocols:

(i) components which are in a continuous vacuum service;

(ii) valves which are not externally regulated, such as in-line check valves;

(iii) pressure relief valves which are downstream of an intact rupture disc; and

(iv) reciprocating compressors which are equipped with degassing vents and vent control systems.

(E) Alternate methods of fugitive monitoring may be used, subject to the approval of the executive director.

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives of the commission or any local air pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to the permits by rule of Chapter 106 of this title (relating to Permits by Rule), as specified in paragraph (4) of this section shall maintain any records specified in the permit by rule.

(B) Permit holders who are subject to paragraph (7) of this section shall maintain a leaking-components log in accordance with §116.620(e)(2) of this title.

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

Filed with the Office of the Secretary of State on August 15, 2000.

TRD-200005730
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Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §§116.710, 116.715, 116.721, 116.722, 116.750

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also adopted 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; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

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 15, 2000.

TRD-200005731
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER J. MULTIPLE PLANT PERMITS

30 TAC §§116.1010, 116.1011, 116.1014, 116.1015, 116.1020, 116.1021, 116.1040, 116.1041, 116.1050, 116.1060, 116.1070

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The new sections are also adopted 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; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

§116.1010. Applicability.

(a) A person may obtain a multiple plant permit for existing facilities subject to TCAA, §382.0518 or §382.0519 at multiple plant sites that are owned or operated by the same person or persons under common control if:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing grandfathered facilities or for facilities authorized under Subchapter H of this chapter (relating to Voluntary Emission Reduction Permits), the rates that would be authorized under Subchapter H of this chapter; and

(2) the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

(b) A permit issued under this subchapter may not authorize emissions from any facility that exceeds that facility's highest historic annual rate, if the facility is grandfathered, or the levels authorized in the facility's most recent permit, if the facility is permitted. The highest historic annual rate would be determined by either of the following:

(1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or

(2) using data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year.

(c) Emissions control equipment previously installed at a facility permitted under this chapter may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

§116.1011. Multiple Plant Permit Application.

(a) An application for a multiple plant permit must include a completed Form PI-1M Multiple Plant Permit Application. The Form PI-1M must be signed by an authorized representative of the applicant. The Form PI-1M specifies additional support information which must be provided before the application is deemed complete. In order to be granted a multiple plant permit, the owner or operator of the existing facilities shall submit the following information to the commission:

(1) information to demonstrate compliance with applicable conditions of §116.711 of this title (relating to Flexible Permit Application);

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which a multiple plant permit application is filed prior to September 1, 2001, the information required by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application) solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit;

(3) for permitted facilities, the relevant permit;

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

(5) information necessary to calculate the cost of public notice under §116.1040 of this title (relating to Multiple Plant Permit Public Notice).

(b) Grandfathered facilities which do not apply for a multiple plant permit prior to September 1, 2001 must first obtain a permit under Subchapter B of this chapter (relating to New Source Review Permits) before they are eligible to be included in a multiple plant permit.

§116.1014. Application Review Schedule.

The multiple plant permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

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 15, 2000.

TRD-200005732
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-1966

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CHAPTER 122. FEDERAL OPERATING PERMITS

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §122.10, General Definitions; §122.110, Delegation of Authority to Executive Director; §122.130, Initial Application Due Dates; §122.131, Phased Permit Detail; §122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; §122.134, Complete Application; §122.139, Application Review Schedule; §122.140, Representations in Application; §122.142, Permit Content Requirements; §122.143, General Terms and Conditions; §122.161, Miscellaneous; §122.210, General Requirements for Revisions; §122.213, Procedures for Administrative Permit Revisions; §122.217, Procedures for Minor Permit Revisions; §122.322, Bilingual Public Notice; §122.350, EPA Review; §122.410, Operating Permit Interface; §122.412, Acid Rain Permit Application Due Dates; §122.414, Acid Rain Permit Revisions; §122.501, General Operating Permits; §122.502, Authorization to Operate; §122.503, Application Revisions for Changes at a Site; §122.504, Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded; §122.505, Renewal of the Authorization to Operate Under a General Operating Permit; and §122.506, Public Notice for General Operating Permits. The commission also adopts new §122.600, Implementation of Periodic Monitoring; §122.602, Periodic Monitoring Applicability; §122.604, Periodic Monitoring Application Due Dates; §122.606, Applications for Periodic Monitoring; §122.608, Procedures for Incorporating Periodic Monitoring Requirements; §122.610, Periodic Monitoring General Operating Permits Content; §122.612, Periodic Monitoring Requirements Permits and General Operating Permit Applications; §122.700, Implementation of Compliance Assurance Monitoring; §122.702, Compliance Assurance Monitoring

Applicability; §122.704, Compliance Assurance Monitoring Application Due Dates; §122.706, Applications for Compliance Assurance Monitoring; §122.708, Procedures for Incorporating Compliance Assurance Monitoring Requirements; §122.710, Compliance Assurance Monitoring General Operating Permit Content; §122.712, General Terms and Conditions for Compliance Assurance Monitoring; §122.714, Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications; and §122.716, Compliance Assurance Monitoring Quality Improvement Plans.

Sections 122.10, 122.134, 122.140, 122.142, 122.143, 122.161, 122,217, 122.501 - 122.506, 122.604, 122.606, 122.608, 122.610, 122.612, 122.700, 122.702, 122.706, 122.708, 122.712, 122.714, and 122.716 are adopted with changes to the proposed text as published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 1979). Sections 122.110, 122.130 - 122.132, 122.139, 122.210, 122.213, 122.322, 122.350, 122.410, 122.412, 122.414, 122.600, 122.602, 122.704, and 122.710 are adopted without changes and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Title V of the 1990 Amendments to the Federal Clean Air Act (FCAA), enacted on November 15, 1990, directed the United States Environmental Protection Agency (EPA) to establish the minimum requirements for a state operating permit program. The EPA promulgated 40 Code of Federal Regulations Part 70 (40 CFR Part 70) to comply with this directive. The commission adopted Chapter 122, Federal Operating Permits, to implement the federal operating permits program required by 40 CFR Part 70.

This rulemaking revised Chapter 122 to address two federally mandated monitoring programs: compliance assurance monitoring and periodic monitoring. On October 22, 1997, EPA established the Compliance Assurance Monitoring (CAM) Program with the promulgation of 40 CFR Part 64 to respond to FCAA, §114(a)(3), concerning enhanced monitoring and compliance certifications and FCAA, §504(b), concerning monitoring and analysis (62 FR 54901). 40 CFR 64 was originally proposed in 1991 as the enhanced monitoring rule. However, due to the controversy surrounding it and subsequent proposals, EPA decided to shift the focus of 40 CFR Part 64, and the enhanced monitoring rule was withdrawn and replaced with CAM. The EPA states that "the general purpose of the monitoring required by Part 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit" (62 FR 54918). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements reside in the new Subchapter H, concerning Compliance Assurance Monitoring.

The other federal monitoring program addressed by this rulemaking is "periodic monitoring." Although EPA promulgated an entire rule to specifically define the requirements for implementing CAM, the regulatory authority for periodic monitoring resides solely in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of an emission unit's compliance with the permit. The commission has always had the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. However, this rulemaking provides an alternative streamlined approach, similar to that adopted for CAM, to implement periodic monitoring requirements. The requirements for the implementation of periodic monitoring reside in the new Subchapter G, concerning Periodic Monitoring. Finally, the commission amended some sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the Texas Clean Air Act (TCAA).

SECTION BY SECTION DISCUSSION

The explanation of the rule is divided into three parts. The first part contains a general overview of CAM and the streamlined CAM implementation approach, as well as a discussion of the specific CAM requirements of Subchapter H (§§122.700 - 122.716). The second part contains a general overview of periodic monitoring and the periodic monitoring implementation approach, as well as a discussion of the relationship between CAM and periodic monitoring (§§122.600 - 122.612). The second part also contains a discussion of the specific periodic monitoring requirements of Subchapter G. The third part is a discussion of other amendments to Chapter 122, including amendments to acid rain requirements (§§122.110 - 122.506). The commission introduced several new terms into §122.10 and amended several others. Specific changes to definitions are discussed in the applicable part of the preamble discussion.

In accordance with §122.10(2), CAM is an applicable requirement of the federal operating permits program because EPA states that CAM was promulgated under the authority of FCAA, §114(a)(3) and §504(b). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program in Texas and to provide a streamlined implementation approach. Unlike many other applicable requirements that specifically define emission limitations or standards and associated monitoring, recordkeeping, reporting, and testing requirements, 40 CFR 64 is a general monitoring rule that defines broad principles and performance criteria for establishing CAM requirements in the federal operating permit, but does not specifically define the monitoring requirements that apply to a specific emission unit. As a result, Subchapter H is necessary to provide procedures for establishing the CAM requirements that will apply to permit holders.

40 CFR 64 applies to emission units with control devices at major sources that have the pre- control potential to emit greater than the major source threshold levels and are subject to an emission limitation or standard in an applicable requirement. It only applies to emission units meeting all these criteria, evaluated on a pollutant-by-pollutant basis. 40 CFR 64 also contains exemptions for certain emission limitations and standards and specific types of emission units. It requires monitoring that provides a reasonable assurance of compliance with the applicable requirements and reflects proper operation and maintenance of the control device.

Three options for the implementation of CAM were considered: a strictly "case-by-case" approach, a rulemaking approach, and a general operating permit (GOP) approach. 40 CFR 64 focuses

on a "case-by-case" approach. This approach would require each owner or operator to design a monitoring plan for each emission unit subject to CAM and to submit it, along with a detailed justification for each element of the plan, to the permitting authority for approval. However, due to the complex nature of the 40 CFR 64 requirements and the number of emission units in Texas that may be subject to 40 CFR 64, the design and review of "case-by-case" CAM plans would be resource-intensive for both permit holders and the executive director. Under a strictly "case-by-case" approach, maintaining consistency in the application of CAM requirements across the state may be difficult. In addition, a strictly "case-by-case" approach would require separate executive director review, public review, and EPA review for each individual CAM plan. The commission does not believe that implementing CAM on a strictly "case-by-case" basis is the best use of the regulated community's, the public's, EPA's, or the executive director's resources. Consequently, the commission did not propose to implement CAM on a strictly "case-by-case" basis.

In addition to the strictly "case-by-case" approach, an implementation approach using rulemaking to establish CAM requirements was considered. This approach would require the commission to use rulemaking to establish monitoring requirements for applicable requirements that would satisfy CAM for emission units across the state. However, as with a strictly "case-by-case" approach, the rulemaking process is resource-intensive and, due to the procedural requirements involved, is often very time- consuming. In addition, because applicable requirements change frequently, keeping CAM requirements that are established through rulemaking current would be difficult. If an applicable requirement changed, revisions to the affected rule would be required before the CAM requirements could be updated to account for the change in the applicable requirement. The minimum time for the commission to complete rulemaking is approximately five months. The commission does not believe that a rulemaking approach for the implementation of CAM is a suitable or practical option. Therefore, the commission did not propose a rulemaking approach for the implementation of CAM.

Finally, GOPs were considered as a means for implementing CAM. This approach would allow the executive director to use GOPs to establish the monitoring requirements that would satisfy CAM for emission units across the state. The commission believes that the compliance assurance monitoring general operating permit (CAM GOP) approach would minimize resource expenditures for the permit holder, the executive director, the public, affected states, and EPA. This approach would allow the permit holder to choose a CAM monitoring option determined by the executive director to satisfy CAM rather than design a "case-by-case" CAM plan. These monitoring options could be used by multiple emission units across the state. Use of these CAM GOPs would allow EPA, the public, and affected states to consolidate the majority of their review of these requirements and, thus, allow the executive director to resolve any comments more efficiently. As a result of the consolidated review and predetermined options in the CAM GOP, this approach would help ensure that implementation of these requirements is consistent across the state. In contrast to the rulemaking approach, CAM GOPs could be revised through the GOP revision process. This would allow the executive director to more easily revise CAM GOPs to reflect rule changes.

Although 40 CFR 64 focuses on a "case-by-case" approach, it allows permitting authorities the flexibility to use a programmatic approach, such as the CAM GOP approach, for the implementation of CAM. The commission submitted several comments to EPA during the development of 40 CFR 64, recommending that permitting authorities be allowed to establish CAM requirements on a programmatic basis. This programmatic approach would allow permitting authorities to design CAM monitoring requirements for a class of emission units that can be used across the state. The preamble to the promulgated 40 CFR 64 rule states that "[t]he EPA encourages States to consider adding monitoring requirements to existing and new rules that are consistent with 40 CFR 64 requirements. In this manner, the burdens associated with source-specific monitoring development could be reduced. To provide an incentive for this type of rule, the final rule includes a provision (see §64.4(b)) that allows the owner or operator to rely upon this type of programmatic rule as the primary documentation of the appropriateness of its monitoring. This approach would reduce the number of case-by-case reviews necessary to implement 40 CFR 64 (62 FR 54903). Although the 40 CFR 64 preamble discusses the programmatic approach in the context of rulemaking, the commission believes that the CAM GOP approach is consistent with the goals of the programmatic approach and achieves the same results. As discussed previously, the CAM GOP approach would more easily accommodate changes in applicable requirements than would a rulemaking approach. The ability to quickly address revised applicable requirements is particularly important to ensure that federal operating permits reflect a site's most current compliance obligations. Thus, the CAM GOP streamlined approach is designed to address 40 CFR 64 requirements in a programmatic manner.

This rulemaking establishes procedures for using CAM GOPs to provide monitoring options for emission units subject to 40 CFR 64. Establishing CAM requirements through a GOP will provide for a streamlined implementation of 40 CFR 64. Traditionally, GOPs have been used to codify applicable requirements for specific types of sites (e.g., Oil and Gas, Bulk Fuel Terminal, Municipal Solid Waste Landfill, and Site-Wide). However, a CAM GOP will address only CAM requirements. A CAM GOP will contain emission limitations or standards and corresponding monitoring options determined by the executive director to satisfy 40 CFR 64. For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy CAM requirements for another, the executive director will incorporate monitoring options from applicable requirements that satisfy CAM into the CAM GOP, as appropriate. As permit holders apply to use a CAM GOP, the executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to satisfy 40 CFR 64. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the approved monitoring options become representations under which the permit holder shall operate. Each CAM GOP, and the CAM monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition, consistent with the procedures in Subchapter F, concerning General Operating Permits.

Because the commission recognizes that the CAM GOP approach may not be appropriate in all cases, the adopted rules allow permit holders the flexibility to submit a "case-by-case" CAM

plan for review and approval by the executive director. Therefore, use of the CAM GOP approach will be optional. However, the information required to be in a "case-by-case" CAM plan application may be more than that required to be in a CAM GOP application for the primary reason that the executive director will be evaluating its contents for the first time. For example, while a CAM GOP will be evaluated by the executive director, EPA, affected states, and the public before a permit holder submits an application with a CAM GOP monitoring option from the CAM GOP, the monitoring plan submitted in a CAM "case-by-case" application is not subject to similar review before being submitted to the executive director for approval. Furthermore, much of the information required in a CAM "case-by- case" application will already be contained in the compliance assurance monitoring GOPs. A detailed discussion of Subchapter H containing the requirements for a CAM GOP and a "case-by-case" CAM plan follows.

SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING

The sections implementing CAM are contained in new Subchapter H, concerning Compliance Assurance Monitoring. The commission also amended §122.10 to define terms applicable to CAM. These terms are discussed as they appear in Subchapter H and in the context in which they are used. Terms from 40 CFR 64 were added to §122.10 where needed to explain Subchapter H, unless already addressed in Chapter 122.

The commission adopts §122.700, concerning Implementation of compliance assurance monitority. The implementation approach in §122.700 creates two methods for addressing CAM requirements in permits or authorizations to operate: (1) CAM GOP; and (2) the CAM case-by-case determination. Either method may be used to establish CAM requirements and both methods are designed to satisfy 40 CFR 64. The commission also defined the terms "Compliance assurance monitoring general operating permit (CAM GOP)" and "Compliance assurance monitoring (CAM) case- by-case determination" in §122.10.

The term "Compliance assurance monitoring general operating permit (CAM GOP)" is defined in §122.10(4) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter H, concerning Compliance Assurance Monitoring. This definition is added to distinguish GOPs that are designed to satisfy CAM requirements from traditional general operating permits, which are used to codify all applicable requirements for specific types of sites. 40 CFR 64 does not contain procedures for developing CAM GOPs; therefore, the commission adopted Subchapter H to address these procedures. A CAM GOP will contain a list of emission limitations or standards that are subject to Subchapter H. Associated with each emission limitation or standard will be monitoring options established by the executive director to satisfy CAM. A CAM GOP will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition as are all GOPs when initially issued under Subchapter F. The executive director plans to develop multiple CAM GOPs, each CAM GOP addressing different groups of applicable requirements. Permit holders may select an appropriate monitoring option from a CAM GOP and submit an application to the executive director for approval to use the option to satisfy CAM requirements. If approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the approved monitoring options become representations under which the permit holder shall operate. The commission is also providing flexibility in Subchapter H to allow permit holders to request a CAM case-by-case determination. In some cases, due to unique site-specific circumstances, the monitoring options contained in a CAM GOP may not be appropriate for a specific emission unit or control device. In other cases, the permit holder may just prefer to develop a site- specific monitoring approach. In addition, some applicable requirements may apply to a limited number of emission units across the state and developing monitoring options for these applicable requirements for inclusion in a CAM GOP may not be resource-efficient for the executive director.

Section 122.10(3) defines the term "Compliance assurance monitoring (CAM) case-by-case determination" as a monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR 64. This definition was added to distinguish between a CAM GOP and a "case-by-case" determination. Once approved, the "case-by-case" monitoring plan will be incorporated into the federal operating permit. Because 40 CFR 64 focuses on a "case-by-case" approach, the commission chose not to adopt Chapter 122 rule language to define this approach. Instead, the commission relies on specified sections of 40 CFR 64 for implementing the "case-by-case" approach. In the proposed rule, these sections of 40 CFR 64 were identified in §122.700. These sections are more appropriately identified in other sections of Subchapter H and are now identified in §§122.706, 122.708, and 122.714. In the interest of providing consistency with the existing Federal Operating Permit Program under Chapter 122, all permit holders, regardless of the implementation approach, will determine applicability using §122.702, concerning Compliance Assurance Monitoring Applicability, will submit applications in accordance with the schedules in §122.704, concerning Compliance Assurance Monitoring Application Due Dates, and must comply with §122.708, concerning Procedures for Incorporating Compliance Assurance Monitoring Requirements. Section 122.712, concerning General Terms and Conditions for Compliance Assurance Monitoring, applies to all permit holders because it contains general terms and conditions potentially applicable to both case-by-case determinations and CAM GOPs. Section 122.716, concerning Quality Improvement Plans, applies to all permit holders in order to provide consistency in implementation.

The commission recognizes that, in some cases, 40 CFR 64 and Chapter 122 use different terms to describe the same concept. This difference in terminology exists because Texas developed its federal operating permit program before the promulgation of 40 CFR 64. To address these differences and maintain consistency with Chapter 122, the commission adopts §122.700(b), which states that references in 40 CFR 64 to 40 CFR 70 shall be satisfied by the requirements of Chapter 122. For example, the commission uses the Chapter 122 term "deviation" instead of the 40 CFR 64 terms "excursion" and "exceedance." The commission believes that the Chapter 122 definition of deviation alleviates the necessity of incorporating into Chapter 122 the 40 CFR 64 definitions for exceedance and excursion. According to 40 CFR 64, exceedance means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring. Excursion means a

departure from an indicator range established for monitoring under 40 CFR 64, consistent with any averaging period specified for averaging the results of the monitoring. Deviation, as defined in Chapter 122, is any indication of noncompliance with a term or condition of a permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit. All three terms define instances when an emission unit may not be in compliance with an applicable emission limitation or standard. However, the commission notes that deviations, including excursions and exceedences, are not necessarily violations. The commission believes that the definition of deviation is sufficiently broad to encompass the terms "exceedance" and "excursion". Furthermore, although 40 CFR 64 defined these two separate terms, the response to each condition is the same and the two terms are always used together. For example, under 40 CFR §64.7(d), a permit holder would respond to excursions and exceedences in the same manner. Therefore, the commission believes that making a distinction between situations which indicate that emissions are exceeding an emission limitation or standard and situations where an indicator of performance is outside the bounds of proper operation is unnecessary. Also, consistent with the Chapter 122 use of the term deviation, the commission adopts the term "deviation limit," instead of adopting the 40 CFR 64 term "indicator range."

The commission adopts §122.702 to address CAM applicability. CAM is applicable to emission units that satisfy each of the following criteria. First, the emission unit must be located at a major source subject to Chapter 122 and not be an exempted utility unit under §122.702(d). Second, the emission unit must be subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in §122.702(c). Third, the emission unit must use a control device to achieve compliance with the emission limitation or standard in the applicable requirement. Finally, the emission unit must have a pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source. The applicability criteria for each emission unit must be considered separately with respect to each air pollutant (i.e., on a pollutant-by-pollutant basis).

Because use of a control device is important in determining applicability under §122.702, the commission defines the term "control device" in §122.10(6) and makes clear in §122.702(a) that the term "control device," as used in Subchapter H, shall have the meaning defined in §122.10(6). 30 TAC §101.1, concerning Definitions, also contains a definition in §101.1(18) for control system or control device; however, the definition in §122.10(6) only applies to Subchapter H. The definition for §122.10(6) is necessary because EPA specifically excluded inherent process equipment from the 40 CFR 64 definition of control device and §101.1(18) does not. The control device definition in §122.10(6) is consistent with 40 CFR 64; however, for simplicity, the §122.10(6) definition combines the 40 CFR 64 definitions of control device and inherent process equipment.

Another important concept in §122.702 is the determination of CAM applicability on a pollutant-by-pollutant basis. In 40 CFR §64.1, EPA states that CAM applies to "pollutant-specific emission units" and defines the term as an emissions unit considered separately with respect to each regulated air pollutant. Rather than define in Chapter 122 the term "pollutant-specific emission unit," the commission believes that §122.702(a) accomplishes the same result. Section 122.702(a) states that for purposes of CAM applicability, each emission unit shall be considered separately with respect to each air pollutant. The following example illustrates how Subchapter H applies on a "pollutant-by- pollutant" basis.

Example: A permit holder in Harris County has an emission unit located at a site which is a major source. The emission unit emits particulate matter (PM), sulfur dioxide (SO_2), nitrogen oxides (NO_x), and carbon monoxide (CO). The emission unit is subject to applicable requirements that contain emission limitations or standards for PM, SO_2, and NO_x emissions. The emission unit is equipped with a control device to comply with the emission limitations or standards regulating PM and NO_x. The emission unit has a pre-control device potential to emit 50 tons per year of PM and 30 tons per year of NO_x. The major source threshold in Harris County for PM and NO_x is 100 tons per year and 25 tons per year, respectively. The major source threshold is 25 tons per year, because Harris County is a severe ozone nonattainment county and NO_x is a precursor to ozone.

The emission unit is not subject to CAM for PM because the emission unit's pre-control device potential to emit PM is less than the Harris County major source threshold for PM. The emission unit is not subject to CAM for SO_2 because the emission unit is not equipped with a control device which is used to comply with the applicable emission limitations or standards for SO_2. The emission unit is not subject to CAM for CO because the emission unit is not subject to any applicable requirements that contain emission limitations or standards for CO. However, the emission unit is subject to CAM with respect to NO_x because it satisfies all of the CAM applicability criteria in §122.702(b).

Consistent with 40 CFR §64.2(a), §122.702(b)(1) applies whether the emission unit is subject to an emission limitation or standard for an air pollutant, or surrogate thereof. The inclusion of the clause "or surrogate thereof" is to address situations in which an emission limitation or standard is expressed in terms of a pollutant (or other surrogate) that is different from the air pollutant that is being controlled (62 FR 54912). An example of a surrogate for an emission limitation is an emission limit expressed in terms of opacity rather than PM.

40 CFR §64.2(b) provides exemptions for several emission limitations and standards, and backup utility power emission units. Sections 122.702(c) and (d) exempt these same emission limitations or standards from Subchapter H, with the following additions for clarity. Section 122.702(c)(7) exempts emission limitations or standards, in addition to those identified in 40 CFR 64, that EPA identifies in guidance as exempt from CAM. This exemption will allow the regulated community to take advantage of exemptions that EPA identifies in guidance for 40 CFR 64. For example, EPA states in its Compliance Assurance Monitoring Technical Guidance Document issued August 1998 that the amendments to 40 CFR 61, Subpart L are exempt from CAM although the original emission limitations or standards were proposed before November 15, 1990. Section 122.702(c)(8) also exempts emission limitations or standards regulating fugitive emissions to be consistent with EPA's 40 CFR 64 preamble which states that "fugitive emissions are not subject to any specific part 64 monitoring requirements" (62 FR 54909).

The commission adopts §122.704 to address CAM application due dates. Section 122.704 contains application due dates for permit holders applying to use a monitoring option selected from a CAM GOP or applying to use a CAM case-by-case determination. The implementation mechanism selected does not affect the due date of an application. An application due date is dependent upon three events: the date an emission unit becomes subject to Subchapter H, the date the operating permit is initially

issued or authorization to operate granted for the site, and the date the executive director issues a CAM GOP containing an emission limitation or standard applicable to the emission unit. A permit holder with an emission unit subject to CAM before the issuance date of a CAM GOP containing an applicable emission limitation or standard must submit an application no later than 30 days after the second permit anniversary (of the permit or the authorization to operate for the site) following the issuance of the CAM GOP. A permit holder with an emission unit that becomes subject to CAM after the issuance date of an applicable CAM GOP must submit an application no later than 30 days after the second permit anniversary (of the permit or the authorization to operate for the site) following the date that the emission unit became subject to CAM. This application submittal schedule should provide permit holders the necessary time for budgeting, capital expenditures, installation of equipment, and testing.

The commission defines "Permit anniversary" in §122.10(18) as the date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal. For example, a permit issued on January 1, 1999 has a permit anniversary every January 1. This concept already exists in Chapter 122; however, the commission defined the term to simplify §122.704. Since "Permit anniversary" is a defined term, the commission amended other sections of Chapter 122 to substitute "permit anniversary" for the phrase "12-month period after initial permit issuance" or "12-month period after permit issuance or renewal." The affected sections are §122.131(d), concerning Phased Application Process for Initial Applications; §122.213(d), concerning Procedures for Administrative Permit Revisions; and §122.217(e), concerning Procedures for Minor Permit Revisions. The amendments do not change the time frame for submitting information under these sections.

The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR Part 64, compliance with CAM may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM GOPs issued over time. Finally, under the schedule, permit holders will submit applications to the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

The following hypothetical examples are provided to help the reader understand the application submittal schedule. The dates assigned to the events in the following examples are provided for explanatory purposes only and do not reflect the actual or anticipated dates of such events.

Example 1: On January 1, 1999, the executive director issues a federal operating permit for Emission Unit One (EU 1), an emission unit which satisfies all of the CAM applicability criteria in §122.702. The renewal date for the permit is January 1, 2004. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 1 is subject.

Example 1 Discussion: Section 122.704(1) states that an application is due no later than 30 days after the second permit anniversary following issuance of an applicable CAM GOP if an emission unit becomes subject to CAM before issuance of the CAM GOP. Since the CAM GOP was issued on December 1, 2000, the permit holder must identify the second permit anniversary date (of the permit under which EU 1 operates) after December 1, 2000 to determine when the application is due. The permit was issued on January 1. Thus, the first permit anniversary date after issuance of the CAM GOP is January 1, 2001 and the second permit anniversary date after issuance of the CAM GOP is January 1, 2002. In this example, an application must be submitted no later than 30 days after January 1, 2002--in other words, January 31, 2002.

Example 2: On June 1, 1999, the executive director issues a federal operating permit for Emission Unit Two (EU 2). The renewal date for the permit is June 1, 2004. On December 1, 2000, the executive director issues a CAM GOP containing an emission limitation or standard to which EU 2 is subject; however, EU 2 doesn't meet all of the applicability criteria as of December 1, 2000. On March 1, 2001, EU 2 becomes subject to CAM because it now satisfies all of the applicability criteria in §122.702 as the result of a decrease in the major source threshold in the county in which EU 2 operates.

Example 2 Discussion: Section 122.704(2) states that an application is due no later than 30 days after the second permit anniversary following the date that the emission unit becomes subject to CAM. Since EU 2 became subject to the rule on March 1, 2001 (i.e., the date of the decrease in the major source threshold for the county), the permit holder must identify the second permit anniversary date (of the permit under which EU 2 operates) after March 1, 2001 to determine when an application is due. The permit was issued on June 1. Thus, the first permit anniversary date after March 1, 2001 is June 1, 2001, and the second permit anniversary date after March 1, 2001 is June 1, 2002. In this example, an application must be submitted no later than 30 days after June 1, 2002--in other words, July 1, 2002.

Example 3: On March 1, 2000, the executive director issues a single federal operating permit for Emission Unit Three (EU 3) and Emission Unit Four (EU 4) which are subject to CAM per §122.702. The renewal date for the permit is March 1, 2005. EU 3 and EU 4 share a control device to comply with different emission limitations and standards. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 3 is subject. On June 1, 2001, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 4 is subject.

Example 3 Discussion: The permit holder must submit an application for EU 3 by March 31, 2002 and an application for EU 4 by March 31, 2003, respectively (see Example 1). The purpose of this example is to demonstrate the applicability of §122.704(3) and to illustrate that each emission limitation is to be evaluated separately when determining the application due date for an emission unit. As this example shows, emission units operating under the same federal operating permit and sharing the same control device may have different application submittal dates.

Example 4: On July 1, 2002, the executive director issues a federal operating permit for Emission Unit Four (EU 4), an emission unit which satisfies the CAM applicability criteria in §122.702 before the issuance of the CAM GOP applicable to that emission unit. The renewal date for the permit is July 1, 2007. Six months before the permit issuance date of July 1, 2002, the executive director issued a CAM GOP on January 1, 2002 which contains the emission limit or standard to which EU 4 is subject.

Example 4 Discussion: Section 122.704(1) is applicable to this situation. It states that for an emission unit that becomes subject to Subchapter H on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following issuance of the CAM GOP. In this example, the first permit anniversary following issuance of the CAM GOP is July 1, 2003; the second, July 1, 2004. Therefore, the permit holder must submit a CAM application for EU 4 no later than July 31, 2004.

The commission adopts §122.706(a), which identifies the minimum information that must be contained in an application for a CAM GOP. This information includes the monitoring option, the deviation limit (discussed in the following paragraphs), and the justification for the deviation limit. The executive director requires this information in order to review and approve the CAM requirements for an emission unit using a CAM GOP. As required by 40 CFR 64, the monitoring option will include, among other things, the monitoring of one or more indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities). Thus, the monitoring option will involve monitoring direct emissions or some type of parameter, such as temperature or pressure drop and/or performing inspection and maintenance activities. Unless defined by the monitoring option selected, the permit holder will submit a deviation limit that will be used to identify the point at which the monitored parameter indicates a potential problem with the operation of the control device or emission unit.

The term "Deviation limit" is defined in §122.10(8) as a designated value(s) or conditions(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation, as defined in §122.10(7). Examples of deviation limits are a minimum pressure drop, an open valve, or the results of an inspection maintenance program. The following example further explains the term "Deviation limit."

Example: An emission unit uses a scrubber to comply with an applicable emission limitation or standard. A performance test indicates that when the pressure drop across the scrubber is at or above 25 inches of water, the emission unit is in compliance with the emission limitation or standard. In this example, the indicator of performance is pressure drop and the deviation limit is a pressure drop of 25 inches of water. Operation of the scrubber with a pressure drop across the scrubber of 25 inches of water or above is indicative that the emission unit is in compliance with the applicable emission limitation or standard. However, if monitoring of the pressure drop indicated a value, for example, of 20 inches of water, the scrubber would be operating outside the boundary established for the indicator of performance and this event would be considered a deviation.

Some monitoring options contained in a CAM GOP may have a deviation limit established in the CAM GOP. If this is not the case, the permit holder will submit a proposed deviation limit and supporting justification for approval by the executive director in accordance with §122.706(a)(1)(E). The deviation limit will be based on information about the specific operation of the control device and emission unit. As specified in §122.706(a)(3), the permit holder will typically use performance testing, engineering calculations, historical data, and manufacturer's recommendations to justify the proposed deviation limit. However, the CAM GOP may more specifically define the approach for justifying the deviation limit or provide alternatives to those specified in Subchapter H.

As required by 40 CFR §64.3(d)(1), §122.706(a)(4) specifies that owners or operators of emission units subject to applicable requirements that require continuous emission monitoring systems (CEMS), continuous opacity monitoring systems (COMS), or predictive emission monitoring systems (PEMS) must submit a CAM GOP monitoring option that includes the use of the CEMS, COMS, or PEMS to satisfy CAM requirements for the other emission limitations or standards that are subject to CAM for that particular emission unit. Since Subchapter H applies on a pollutant-by-pollutant basis, this requirement also applies on a pollutant-by-pollutant basis. For example, a NO_x CEMS would be used for NO_x emission limits that apply to the emission unit but would not be used for SO_2 emission limits. Consistent with 40 CFR 64, the commission defined the term "Predictive emission monitoring system (PEMS)" in §122.10(24) as a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard. The term will only apply to Subchapter H. The commission defined PEMS because this is generally a less understood form of monitoring than that of CEMS or COMS.

The commission adopts §122.706(b), which identifies the minimum information that must be contained in an application for a CAM case-by-case determination. As discussed previously, 40 CFR 64 focuses on a "case-by-case" approach; therefore, rather than adopt Chapter 122 rule language to define the information that a permit holder must submit for a CAM case-by-case determination, the commission is requiring permit holders to submit an application for a CAM case-by-case determination in accordance with 40 CFR §64.3 (Monitoring Design Criteria) and 40 CFR §64.4 (Submittal Requirements).

Section 122.708 contains the procedures for incorporating CAM requirements. In the proposal for this rulemaking, the commission proposed a definition for "Enforceable general operating permit application." However, as discussed in the response to comments, that definition has been deleted from the final rule. In place of the definition, the commission revised §122.140 to specify the portions of CAM GOP and periodic monitoring GOP applications that become conditions under which a permit holder shall operate. This approach builds upon the existing concept of having portions of the application for traditional GOPs become conditions under which the permit holder shall operate. For traditional GOPs, §122.140(2) states that upon the granting of an authorization to operate under a GOP, applicability determinations and the bases for the determinations in a GOP application become conditions under which a permit holder shall operate. For sites that operate under permits other than traditional GOPs, CAM and periodic monitoring requirements will reside in those permits. With respect to sites operating under traditional GOPs, upon granting of the authorization to operate, these CAM representations, as noted in §122.140(3), become conditions under which the permit holder shall operate. The commission proposed amendments to the following sections of Chapter 122 to accommodate the term "enforceable general operating permit application": §122.10(3), General Definitions; §122.134(b)(5), Complete Application; §122.140(2), Representations in Application; §122.143(15) and (17), General Terms and Conditions; §122.502(b) and (f), Authorization to Operate; §122.503(a)(1) and (g), Application Revisions for Changes at a Site; §122.504(b)(1), (e), and (g) Application Revisions When an Applicable Requirement or State-Only

Requirement is Promulgated or Adopted or General Operating Permit is Revised or Rescinded; and §122.505(f)(1), Renewal of the Authorization to Operate Under a General Operating Permit. Since the definition of "Enforceable general operating permit application" has been deleted from the final rule, these amendments are unnecessary and have been removed from the final rule. In addition, all references to enforceable GOP application in Subchapter H have been removed from the final rule.

Also, the commission amended §122.143(17) and §122.502(b) to clarify that representations in GOP applications for CAM and periodic monitoring, as specified in §122.140(3), are conditions under which the permit holder shall operate. Similarly, the commission introduced §122.503(a)(2) and (b)(5) and 122.504(a) and (a)(1)(D) to clarify that a permit holder shall submit information about a change to the CAM or periodic monitoring information specified in §122.140(3) by revising the CAM application. Section 122.504(b)(4) now clarifies that a permit holder need not reapply for a revised GOP if the CAM or periodic monitoring information specified in §122.140(3) is unchanged. The references to "updated application" in §122.503 and §122.504 were deleted because the distinction between an "application" and an "updated application" to operate under a GOP is no longer necessary because of the amendments to §122.140(3) previously discussed.

The specific procedures for incorporating CAM requirements into federal operating permits and GOP applications depend on whether the permit holder is applying for a CAM case-by-case determination or a CAM GOP and whether the site is permitted under a GOP or a federal operating permit other than a GOP. Section 122.708(a) specifies that permit holders applying for a CAM case-by- case determination must comply with §122.201, concerning Initial Permit Issuance, or §122.221(b) and (c), concerning Procedures for Significant Permit Revisions, as well as 40 CFR §64.3 and 40 CFR §64.4, as previously discussed. The procedural requirements associated with initial issuance and significant revisions are the same. Owners or operators of emission units operating under a traditional GOP who choose to submit a CAM case-by-case determination will comply with the procedures for initial issuance of a federal operating permit other than a GOP because traditional GOPs, by their nature, apply to a broad class of emission units and cannot be used to accommodate "case-by-case" determinations. Once a CAM case-by-case determination is approved by the executive director, the site will be issued a federal operating permit other than a GOP. Owners and operators of emission units operating under all other federal operating permits who submit a CAM case- by-case determination will be subject to the significant permit revision procedures in §122.221(b) and (c). By requiring compliance with the initial issuance procedures in §122.201 or the significant permit revision procedures in §122.221(b) and (c), the commission ensures that all CAM case-by- case determinations satisfy the Chapter 122 procedural requirements of public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. In addition, under §122.219, concerning Significant Permit Revisions, the incorporation of CAM requirements into a federal operating permit through a CAM case-by-case determination will constitute a significant change to monitoring because permit holders applying for a CAM case-by-case determination have significant discretion over their monitoring requirements. The EPA states in the preamble to the proposed Consolidated Air Rule that an instance where a permit holder has significant discretion over the monitoring to be contained in a federal operating permit constitutes a significant permit revision (63 FR 57787).

Section 122.708(b)(1) applies to permit holders operating under a traditional GOP and applying for a CAM GOP. Consistent with the procedures of Subchapter F, provided the permit holder submits an application under §122.706 and the representations in the GOP application, as specified in §122.140(3), which provide for compliance with the requirements of Subchapter H, the executive director will grant an authorization to operate.

Section 122.708(b)(2) specifies that permit holders operating under a permit other than a GOP and applying for a CAM GOP must comply with §122.217(f) and (g), concerning Procedures for Minor Permit Revisions. This type of change will not qualify as a significant permit revision nor as an administrative permit revision and therefore qualifies as a minor permit revision under §122.215, concerning Minor Permit Revisions. These changes are not significant permit revisions because, as previously discussed, significant permit revisions to monitoring requirements are those over which the permit holder has significant discretion. Because the permit holder is selecting a monitoring option already determined by the executive director to satisfy CAM, the permit holder does not have significant discretion over those requirements. In addition, each CAM GOP is subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition; therefore, it is unnecessary to repeat these procedural requirements using the significant permit revision process.

Section 122.708(c) is provided to address situations where CAM requirements are incorporated into permits at the time of permit renewal. In these cases, the procedural requirements of permit renewal, which are equivalent to the initial permit issuance and significant permit revision procedures, will be used to incorporate CAM requirements into a permit.

Section 122.708(a), (b), and (c) apply only to the initial incorporation of CAM requirements. Section 122.708(d) clarifies that revisions to CAM requirements are governed by Chapter 122, Subchapter C, concerning Permit Revisions, or Subchapter F, concerning General Operating Permits, as appropriate. To allow the executive director to evaluate the technical merits of proposed changes to a deviation limit, in most cases, permit holders will not be allowed to operate under the proposed change until the permit or authorization to operate under a GOP is revised. A permit holder will be allowed to operate a change to a deviation limit prior to revision if the change is necessary as the result of the promulgation or adoption of an applicable requirement. Deviation limits established prior to a change in an applicable requirement may be inconsistent with the applicable requirement after the change. In this case, permit holders will be allowed to operate prior to revision because of the need to comply with the changed applicable requirement.

The following examples are provided to help the reader understand the application submittal procedures:

Example 1: If the permit holder is operating under a general operating permit (e.g., Oil and Gas GOP) and chooses to submit a case-by-case determination to incorporate the CAM requirements, the permit holder will submit a CAM application for a new permit (i.e., site operating permit (SOP) or temporary operating permit (TOP) as applicable) as required by §122.708(a)(1).

Example 2: If the permit holder is operating under an SOP or a TOP and chooses to submit a case-by-case determination to incorporate the CAM requirements, the permit holder will submit

a CAM application for a significant permit revision to the SOP or TOP as required by §122.708(a)(2).

Example 3: If the permit holder is operating under a GOP (e.g., Oil and Gas GOP) and chooses to submit an application for a CAM GOP to incorporate CAM requirements, the permit holder will submit a CAM application to revise the GOP application for the site as required by §122.708(b)(1).

Example 4: If the permit holder is operating under an SOP or TOP and chooses to submit an application for a CAM GOP to incorporate CAM requirements, the permit holder will submit a CAM application for a minor permit revision to the SOP or TOP as required by §122.708(b)(2).

As a result of the adoption of §122.708, some other sections of Chapter 122 were amended. First, because Subchapter H addresses procedures for revising federal operating permits and GOP applications to incorporate CAM requirements, the commission deleted the reference to Subchapter C contained in §122.10(21), definition of "Permit revision." Second, the commission amended §122.217(b), concerning Procedures for Minor Permit Revisions, by adding the phrase "or, as appropriate, the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit." Changes to a permit resulting from the revision of a CAM GOP or periodic monitoring GOP are not significant because the permit holder does not have significant discretion over the monitoring options contained in a compliance assurance monitoring or periodic monitoring general operating permit. Third, the commission amended §122.210, concerning General Requirements for Revisions, by adding subsection (b)(5), which states "the revision of a compliance assurance monitoring or periodic monitoring general operating permit." This change is necessary to make §122.210 consistent with the change to §122.217(b). Finally, the commission amended §122.503(c) to clarify that revisions to GOP application in accordance with §122.503 may not be operated without prior approval if the changes to the application are changes to a deviation limit as noted in §122.608(e) and §122.708(d).

Section 122.710 contains the content requirements for each CAM GOP. Consistent with 40 CFR §64.3(a), §122.710(a)(1) requires that each CAM GOP contain indicators of performance, which may include, but are not limited to, direct or predicted emissions, process and control device parameters that affect control device efficiency or emission rates, and recorded findings of inspection and maintenance activities conducted by the permit holder. Section 122.710(a)(2) specifies that each CAM GOP will contain a deviation limit or procedures for establishing a deviation limit for each indicator of performance. Typically, because the deviation limit will be based on emission unit or control device specific characteristics, a CAM GOP will contain procedures for the permit holder to establish a deviation limit. In certain instances, a CAM GOP may define a deviation limit. For example, a minimum temperature may be specified as the deviation limit for an incinerator burning a class of volatile organic compounds.

Sections 122.710(a)(3) and 122.712(a)(1) are intended to satisfy the requirements of 40 CFR §64.3(b)(1), (2), and (3), which state that monitoring must include specifications that provide for obtaining data that are representative of the emissions or parameters being monitored, verification procedures to confirm the operational status of new or modified monitoring equipment, and quality assurance and control practices that are adequate to ensure the continuing validity of data, respectively.

In 40 CFR 64, EPA emphasizes the use of manufacturer's recommendations for establishing CAM requirements. For example, 40 CFR §64.3(b)(3) states that an owner or operator shall consider manufacturer's recommendations in developing quality assurance and control practices and 40 CFR §64.4(b) states that an owner or operator must provide justification for differences from the manufacturer's recommendations if the permit holder provides alternatives.

Consistent with 40 CFR §64.3(b)(4), §122.710(a)(4) requires that each CAM GOP monitoring option specify an averaging period for the purpose of determining whether a deviation has occurred, if appropriate.

Consistent with 40 CFR §64.3(b)(4), §122.710(a)(5) requires that each monitoring option contain specifications for the minimum monitoring frequency. As required by 40 CFR 64, §122.710(a)(5) requires the collection of four or more data values equally spaced over each hour for each emission unit with a post-control potential to emit greater than or equal to the amount for the emission unit to be classified as a major source. The executive director may approve a reduced data collection frequency for these large emission units in certain circumstances, as provided in §122.710(a)(5). However, the monitoring must include some data collection at least once per 24- hour period. As required by 40 CFR 64, all other emission units subject to 40 CFR 64 must be monitored at least once per 24-hour period.

Section 122.710(b) specifies that CAM requirements contained in a CAM GOP shall be designed to provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device, which is consistent with 40 CFR 64.

Section 122.710(c) states that a CAM GOP may require the submission of an application for a CAM case-by-case determination for a particular emission limitation or standard because developing CAM GOPs to address those emission limitations or standards may not be resource-efficient. For example, some emission limitations or standards may apply to very few emission units in the state.

Section 122.712(a) specifies the general terms and conditions that must be contained in a CAM GOP. Permit holders choosing to use the CAM GOP implementation option must comply with these general terms and conditions in addition to the specific monitoring options and deviation limits in the federal operating permit or GOP application. As previously discussed, §122.712(a)(1) in conjunction with §122.710(a)(3) will be used to implement the requirements of 40 CFR §64.3(b)(1), (2), and (3).

Section 122.712(a)(2) is consistent with 40 CFR §64.7(b), which requires an owner or operator to properly maintain the monitoring systems and to maintain, if necessary, parts for routine repairs of the monitoring equipment. As stated in EPA's CAM Technical Reference Guidance Document, issued August 1998, spare parts may be maintained by local vendors if there is no significant impact on immediate availability.

Section 122.712(a)(3) is consistent with 40 CFR §64.7(c) and requires that monitoring be conducted according to the prescribed frequency for all emission unit operating periods, unless the monitoring cannot be conducted because of monitoring malfunctions as defined in §122.712(a)(3)(D), associated repairs, or required quality assurance or control activities. Data collected during such periods is not to be used for purposes

of Subchapter H, including data averages and calculations, or fulfilling a data availability requirement. However, based on 40 CFR §64.9(a), the permit holder must maintain records of the beginning date and time, ending date and time, and cause for monitoring downtime incidents. This record requirement ensures that gaps in valid monitoring data are explained. For this same reason, §122.712(a)(3) also requires permit holders to maintain a record of any intervals during which data was not collected.

Section 122.712(a)(4) states that all incidents of monitoring downtime recorded under §122.712(a)(3)(B) shall be reported in accordance with §122.145, concerning Reporting Terms and Conditions.

Section 122.712(a)(5) is consistent with 40 CFR §64.7(d), which specifies the requirements for responding to deviations by requiring the owner or operator to take corrective action to restore normal operation, minimize emissions, and prevent the recurrence of a deviation.

Section 122.712(a)(6) provides that if the permit holder identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not indicate a deviation while providing valid data or the results of compliance or performance testing document a need to modify the existing CAM requirements, the permit holder shall notify the executive director within 30 days. If necessary, the permit holder shall apply for a revision to the CAM requirements, or a new permit if appropriate, consistent with the procedures of Subchapter C or F of Chapter 122. This paragraph is consistent with 40 CFR §64.7(e). Nothing in this section is intended to limit the commission's options for taking other enforcement action.

Section 122.712(a)(7) clarifies that CAM requirements are subject to §122.144, concerning Recordkeeping Terms and Conditions, §122.145, concerning Reporting Terms and Conditions, and §122.146, concerning Compliance Certification Terms and Conditions. Section 122.144 satisfies the requirements of 40 CFR §64.9(b) and §122.145 satisfies the requirements of 40 CFR §64.9(a).

As provided for in 40 CFR §64.8(a), §122.712(a)(8) requires a permit holder to comply with the requirements of a quality improvement plan (QIP) as specified in §122.716.

Section 122.712(b) states that where CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions will apply. The commission believes that because the general terms and conditions are based on 40 CFR 64, requirements that must be codified in the permit, a CAM case-by-case determination will typically include some of the same general terms and conditions as a CAM GOP.

Section 122.714(a) applies to the CAM GOP implementation mechanism. It contains the CAM information that must be included in a federal operating permit or GOP application upon granting of the authorization to operate and is consistent with 40 CFR §64.6(c). The justification for the deviation limit will not be placed in the permit since the justification is supporting information for the deviation limit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the justification in the GOP application is not a condition with which a permit holder must comply, but is rather supporting information for the deviation limit. Therefore, once the deviation limit is approved, inclusion of the justification in the permit is unnecessary. However, in a manner identical to all other bases for permit content, if the deviation limit established in the permit is invalid due to inaccurate or invalid information, the source may be subject to enforcement action for failure to make proper application. This section also requires that the general and special terms and conditions for CAM GOPs be incorporated into the federal operating permit or approved GOP application. Therefore, these terms and conditions will become terms and conditions under which the permit holder shall operate. Section 122.714(a)(2) clarifies when a permit holder must begin complying with the CAM requirements codified in a permit or GOP application.

Section 122.714(b) applies to the CAM case-by-case determination implementation mechanism. It stipulates the CAM information that must be included in a federal operating permit. As discussed previously, 40 CFR 64 focuses on a "case-by-case" approach; therefore, rather than adopt Chapter 122 rule language to define the CAM information that will be codified in a permit, the commission is relying on 40 CFR §64.6 (Approval of Monitoring) and 40 CFR §64.7 (Operation of Approved Monitoring) to identify the information that will be codified in a permit.

Section 122.716 provides the executive director the authority to require permit holders to implement quality improvement plans (QIPs). 40 CFR §64.8 establishes that QIPs are optional, at the permitting authorities' discretion. The commission has chosen to establish QIPs on a "case-by-case" basis, as appropriate. A QIP may be required based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices. The data to evaluate these criteria will be collected from deviation reports, compliance certifications, site inspections, and any other appropriate sources. Nothing in this section is intended to limit the commission's options for taking other enforcement action.

Finally, with respect to the implementation of CAM, EPA defines savings provisions in 40 CFR §64.10.The commission believes that §122.161, concerning Miscellaneous, already contains the majority of these requirements. However, the commission amended §122.161 to clarify that CAM and periodic monitoring requirements may not be used to justify the imposition of less stringent monitoring that the required by the TCAA, FCAA, or by an air pollution control agency having jurisdiction. The amendment also clarifies that nothing in Subchapters G and H is intended to limit the commission's authority to impose additional or more restrictive monitoring, recordkeeping, testing, or reporting requirements under other programs.

PERIODIC MONITORING

40 CFR §70.6(a)(3)(i)(B) requires that where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of an emission unit's compliance with the permit. The commission has the authority under §122.142(c) to incorporate periodic monitoring into federal operating permits; however, the commission adopted this rulemaking to amend §122.142(c) so that it tracks the language in 40 CFR §70.6(a)(3)(i)(B).

This rulemaking also establishes procedures to allow for a streamlined implementation of periodic monitoring through the use of periodic monitoring GOPs. Traditionally, GOPs have been used to codify all applicable requirements for specific types of

sites; a periodic monitoring GOP will contain emission limitations or standards subject to periodic monitoring requirements and corresponding monitoring options determined by the executive director to satisfy §122.142(c). For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy periodic monitoring requirements for another, the executive director will incorporate monitoring options from applicable requirements that satisfy periodic monitoring into the periodic monitoring GOP, as appropriate. The executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to fulfill the periodic monitoring requirements. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a periodic monitoring GOP, the approved monitoring options become representations under which the permit holder shall operate. Each periodic monitoring GOP, and the periodic monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. The use of monitoring GOPs will be particularly valuable for the implementation of periodic monitoring due to the number of different applicable requirements that will require periodic monitoring. However, use of the periodic monitoring GOPs will be optional. The commission recognizes that the periodic monitoring GOP approach may not be appropriate in all cases. Therefore, permit holders have the flexibility to develop a site-specific periodic monitoring plan and submit it to the executive director for approval rather than using a periodic monitoring GOP. A detailed discussion of Subchapter G containing the requirements for the periodic monitoring GOP and periodic monitoring case-by-case determination follows.

SUBCHAPTER G: PERIODIC MONITORING

The sections that were added to Chapter 122 to address periodic monitoring are discussed in the following paragraphs. The commission also amended §122.10 to define terms applicable to periodic monitoring. These terms will be discussed as they appear in Subchapter G and in the context in which they are used.

The commission adopts §122.600, concerning Implementation of Periodic Monitoring, which addresses two approaches for implementing periodic monitoring. Section 122.600(a) discusses the streamlined approach of using periodic monitoring GOPs and periodic monitoring case-by-case determinations. This approach is conceptually similar to the method established under Subchapter H for implementing CAM requirements and is designed to satisfy §122.142(c).

The term "Periodic monitoring GOP" is defined in §122.10(16) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter G, concerning Periodic Monitoring. This definition is added to distinguish between GOPs established to satisfy periodic monitoring requirements and traditional GOPs which have been used to codify all applicable requirements for specific types of sites. The periodic monitoring GOP is modeled after the CAM GOP and is generally based on the same principles, subject to the same procedures, and structured in the same way. Therefore, please refer to the discussion of §122.700(a) for an explanation of this approach.

Under §122.600(a), §122.142(c) may also be implemented using a periodic monitoring case-by-case determination. The term "Periodic monitoring case-by-case determination" is defined in §122.10(15) as a monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c). This definition is added to distinguish between a periodic monitoring GOP and a "case-by-case" determination. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a periodic monitoring GOP, the approved monitoring options become representations under which the permit holder shall operate. For the same reasons discussed in §122.700, the commission has provided the flexibility for the use of "case-by-case" determinations to satisfy periodic monitoring requirements.

In addition to the streamlined periodic monitoring implementation approach adopted by the commission, the commission has a second approach for incorporating periodic monitoring requirements into federal operating permits. This second approach is codified in §122.600(b). It uses initial permit issuance, permit revision, or permit renewal procedures to incorporate into a permit periodic monitoring requirements for specific emission limitations or standards. However, the commission believes that the streamlined implementation approach will allow for a more efficient use of the executive director's resources, especially given the number of emission limitations and standards subject to periodic monitoring. Thus, §122.600(b) is not included in this rulemaking to provide the executive director with the authority to incorporate periodic monitoring through this second approach, which is already provided for under Chapter 122 and will continue to be used, but to clarify that there is a second approach for addressing periodic monitoring.

Section 122.600(c) provides that if an emission unit is subject to both CAM and periodic monitoring, the CAM requirements established under Subchapter H can be used to satisfy periodic monitoring. Since the CAM requirements are more stringent than periodic monitoring, an adequate CAM plan will satisfy the periodic monitoring requirements.

The commission adopts new §122.602 to address periodic monitoring applicability. Periodic monitoring potentially applies to any emission unit in an operating permit subject to an applicable requirement; however, Subchapter G will not apply to emission limitations or standards which the executive director has determined contain sufficient periodic monitoring (which may consist of recordkeeping). Consistent with EPA's Periodic Monitoring Guidance document, the commission proposed exempting the following from periodic monitoring: emission limitations or standards proposed by EPA after November 15, 1990 under the FCAA, §111 or §112; emission limitations or standards promulgated under the FCAA, Title IV; and emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device. However, the United States Court of Appeals for the District of Columbia Circuit in *Appalachian Power Company, et al. v. Environmental Protection Agency* (D.C. Cir. #98-1536, April 14, 2000) set aside EPA's "Periodic Monitoring Guidance for Title V Operating Permits Programs" released in September 1998 which contained these exemptions. These same emission limitations or standards are also exempt under 40 CFR Part 64 because they contain monitoring sufficient to satisfy Title V monitoring requirements which

include CAM and periodic monitoring. Therefore, the commission believes it is appropriate to continue to exempt these emission limitations or standards from periodic monitoring. Section 122.602 also provides that the requirements of Subchapter G do not apply to emission limitations or standards specified as exempt from periodic monitoring by EPA. This exemption was included to allow the regulated community to take advantage of any other exemptions that EPA identifies in guidance.

The adopted §122.604 addresses application due dates. Section 122.604(a) applies only to permit holders applying for a periodic monitoring GOP or a periodic monitoring case-by-case determination. Because the application due date schedule for periodic monitoring GOPs and periodic monitoring case-by-case determinations is identical to that for CAM GOPs and CAM case-by-case determinations, the reader is directed to the discussion of §122.704 for an explanation of the application due date schedule.

Section 122.604(b) applies to situations in which the executive director incorporates periodic monitoring into federal operating permits without using a periodic monitoring GOP or a periodic monitoring case-by-case determination, consistent with §122.600(b). Applications submitted under §122.604(b) will typically be required at initial issuance where the executive director identifies emission limitations or standards with no monitoring, recordkeeping, reporting, or testing requirements. They may also be required at permit revision or permit renewal when additional monitoring is required to satisfy periodic monitoring.

The commission adopts §122.606(a), which identifies the minimum information that must be contained in an application for periodic monitoring. Applications for periodic monitoring must contain proposed periodic monitoring requirements which may include one or more indicators of performance, a minimum monitoring frequency, a deviation limit, and any other information necessary to satisfy §122.606(b). Consistent with 40 CFR §70.6(a)(3)(i)(B), §122.606(b) requires that the periodic monitoring requirements submitted in the application be designed to produce data that are representative of the emission unit's compliance with the applicable requirement. In addition, the application will also include any information required by the executive director to evaluate the proposed monitoring requirements as provided for in §122.606(a)(3). The monitoring requirements submitted in an application may be based on monitoring options provided by the executive director. They may also be developed by the applicant for the specific emission unit.

The commission adopts new §122.608, to create procedures for incorporating periodic monitoring requirements into permits and general operating permit applications. The procedures differ depending on the implementation option and the type of federal operating permit under which the emission unit is operating. The procedures for incorporating periodic monitoring using a periodic monitoring GOP or a periodic monitoring case-by-case determination are the same as those used for a CAM GOP and a CAM case-by-case determination, respectively. Therefore, the reader is directed to the discussion of §122.708 for an explanation of the procedures for incorporating periodic monitoring requirements into permits and GOP applications.

Section 122.608(c) addresses one difference in the procedures between CAM and periodic monitoring. This subsection specifies that periodic monitoring requirements that are established under §122.600(b) will be addressed through the initial issuance procedures in §122.201, the procedures in Subchapter F, or the procedures for minor permit revision in §122.217(f) and (g). The use of initial issuance procedures for addressing periodic monitoring requirements established under this approach is consistent with the current approach for incorporating periodic monitoring requirements into permits. In the future, these periodic monitoring requirements may be addressed through the minor permit revision procedures or they may be codified in traditional GOPs under the procedures in Subchapter F.

The adopted §122.610 requires that monitoring options in periodic monitoring GOPs be designed to produce data that are representative of compliance with the applicable requirement, which is consistent with 40 CFR §70.6(a)(3)(i)(B). Section 122.610 also specifies that a periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard. As discussed in this preamble with respect to §122.710, these "case-by-case" determinations may be appropriate where emission limitations or standards apply to very few emission units in the state.

The adopted §122.612 identifies the periodic monitoring requirements that must be incorporated in a federal operating permit or GOP application. The same elements in the application will be contained in a federal operating permit or GOP application, except the information required by the executive director to evaluate the proposed periodic monitoring requirements. This information is the justification for the proposed periodic monitoring requirements. The justification for the deviation limit will not be placed in the permit since the justification is supporting information for the deviation limit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the justification in the GOP application is not a condition with which a permit holder must comply, but is rather supporting information for the deviation limit. Therefore, once the periodic monitoring requirements are approved, inclusion of the justification in the permit is unnecessary. However, in a manner identical to all other bases for permit content, if the deviation limit established in the permit is invalid due to inaccurate or invalid information, then the source may be subject to enforcement action for failure to make proper application. Section 122.612(a)(4) makes clear that applicable special terms and conditions will also be codified in the permit or GOP application. Section 122.612(b) was added in response to a comment. It clarifies when a permit holder must begin complying with the periodic monitoring requirements codified in a permit or GOP application.

OTHER CHANGES TO CHAPTER 122

In addition to the changes to Chapter 122 regarding CAM and periodic monitoring, the commission also amended sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the TCAA.

The commission deleted the divisions in Subchapter D of Chapter 122. Many of the divisions in Subchapter D contained a single section. Also, many of the division headings were the same as the section headings. These deletions eliminate the redundant nomenclature.

In the definition of "Applicable requirement," under §122.10, the commission clarified that the asbestos demolition and renovation requirements of 40 CFR 61, Subpart M (National Emissions Standards for Asbestos) and the requirements of 40 CFR 60, Subpart AAA (Standards of Performance for New Residential

Wood Heaters) are not applicable requirements. The change is consistent with 40 CFR §70.3(b)(4) as well as the preamble to 40 CFR 64 (62 FR 54917).

In addition, the commission amended the definition of "Emission unit" contained in §122.10 since it was modeled after the definition of "facility" in the TCAA and the definition of "Emissions unit" in 40 CFR 70. First, the commission deleted the word "smallest" from the definition. Second, the amendment clarifies that an appurtenance may be an emission unit.

The commission amended the definition of "Permit" contained in §122.10 to state that the term "permit" when used in Chapter 122 refers to a CAM GOP or Periodic Monitoring GOP only when clearly indicated by the context. This clarification should alleviate any confusion that may have been caused by using the GOP process to implement CAM or periodic monitoring.

Also under §122.10, in the definition of "Provisional terms and conditions," the commission revised language to clarify that provisional terms and conditions may include requirements that no longer apply. The previous language referred to repealed requirements, which may have implied that the requirements would be repealed through rulemaking; whereas, "Provisional terms and conditions" may be used to address requirements that no longer apply for other reasons, including changes at a site. Subchapters C and F were deleted from the definition of "Provisional terms and conditions" because provisional terms and conditions can be used for CAM and periodic monitoring under Subchapters G and H.

The definition of "Site" in §122.10(29) was revised to clarify that if a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated. The current language states that in this case, the research and development operation shall be treated as a separate site. This may imply that the owner or operator would not have the option of including the research and development operation in the same permit as the collocated manufacturing facility, if the research and development operation were a major source and subject to Chapter 122. Therefore, the commission is clarifying that the research and development operation may be, but is not required to be, treated as a separate site.

Under the same section, in the definition of "Stationary source," the commission clarified that nonroad engines, as defined in 40 CFR 89, are not stationary sources under Chapter 122. This clarification is consistent with the definition of "Stationary source" in FCAA, §302 (concerning Definitions).

The proposed amendments to Chapter 122 published in the *Texas Register* on March 10, 2000 indicated that §122.10(24)(C) would be deleted. Section 122.10(24) (now §122.10(23)) defines the term "Preconstruction authorization." The proposal to delete §122.10(24)(C) was an error. The commission did not intend to delete that section. Since the commission received no comments in support of the erroneously proposed deletion, the commission is retaining §122.10(23)(C).

The commission amended §122.110 by deleting subsection (b). This amendment addressed recent organizational changes at the agency.

In §122.130(a)(1) and (b)(1) (concerning Initial Application Due Dates), the commission replaced the "and" between "owners and operators" with an "or" to clarify that both the owner and the operator of a site do not have to submit separate applications under this section. Either the owner or the operator of the site may submit an application to satisfy this requirement.

In §122.130(c)(2), the commission clarified that the application required to be submitted after a site becomes subject to the program as the result of an action by the executive director or the EPA, is an abbreviated application. When abbreviated applications are submitted initially, the owner or operator submits the remaining application information upon request by the executive director. This minimizes the number of times the applications must be updated by allowing the executive director to receive the remaining information once staff is prepared to review the application. This clarification is consistent with existing language in §122.132(c).

The commission adopts changes to the title of §122.131 from "Phased Application Process for Initial Applications" to "Phased Permit Detail" and, accordingly, amended the rule text by replacing the phrase "phased application process" with the phrase "phased permit detail process." This change was made to avoid confusion between the process in §122.131 for phasing detailed applicability determinations into a permit and the process under §122.201(e), which allows the executive director to issue multiple permits for a site. The title "Phased Permit Detail" more accurately reflects the process in §122.131, which, in certain circumstances, allows detailed applicability determinations to be phased into a permit over a period of time. References to this section, as well as references to "phased application process," in §122.132 and §122.142 were also updated to reflect the title "Phased Permit Detail."

Adopted §122.139 previously referred to FCAA, §112(i)(5) as relating to "Schedule for Compliance." Section 122.139 actually relates to "Early Reduction." The commission has made this correction. Also, the commission amended §122.350 to correct the reference to Title V, which relates to "Permits," rather than "Permit."

The commission adopts amendments to §122.161, concerning Miscellaneous, to clarify that the executive director has the authority to administratively void a federal operating permit, or the authorization to operate under a GOP, upon demonstration by a permit holder that a site no longer meets the applicability criteria in §122.120. For example, after issuance of a federal operating permit, a site may limit its potential emissions below major source thresholds. However, the amendment also makes clear that a site meeting the applicability criteria in §122.120 must have a federal operating permit, regardless of whether a federal operating permit for the site was administratively voided in the past.

The commission adopts corrections to several outdated statutory references in §122.322. References to the Education Code, §21.109 were replaced with Education Code, Chapter 29, Subchapter B; references to 19 TAC §89.2(a) were replaced with 19 TAC §89.1205(a); references to 19 TAC §89.2(g) were replaced with 19 TAC §89.1205(g); and references to 19 TAC §89.2(d) were replaced with 19 TAC §89.1205(d). These revisions updated the statutory references in §122.322, but did not change any existing requirements.

In §122.350(b)(3), the commission adopted rule language which allows the EPA review period and public notice comment period to run concurrently for the issuance or revision of a GOP. By completing the requirements concurrently, the commission will be able to establish a GOP more quickly to fulfill the 40 CFR 70 requirements. Additionally, applicable requirements codified in a GOP may periodically be revised, repealed, or updated. If an

applicable requirement contained in a GOP is revised, the permit holder is responsible for complying with the revised requirement by writing provisional terms and conditions, even though the revised applicable requirements have not been codified into the GOP. This situation can cause confusion for the regulated community, the public, and commission enforcement personnel, since the applicable requirements codified in the GOP would necessarily lag behind any recent revisions to the applicable requirements codified in the GOP. By allowing the EPA review period and public notice comment period or public announcement period to run concurrently, a GOP may be updated more quickly, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This will assist the regulated community, since permit holders will not have to maintain provisional terms and conditions for lengthy periods of time. The commission emphasizes that this change does not eliminate opportunity for an EPA review period, a public notice comment period, or public announcement period on GOP initial issuances or revisions.

The new §122.501(d)(5) concerns notice requirements for rescissions of GOPs and follows the notice procedures for initial issuance of a GOP, as modified to fit the circumstances of a rescission. For example, since the public notice would concern the rescission of an existing GOP, there would be no draft GOP on which to provide comments. The issue for comment would concern whether it is appropriate or not to rescind the particular GOP.

The commission also adopts §122.501(g), which allows the executive director to combine GOPs. Thus, the executive director can ensure that the number of GOPs is maintained at a manageable level. Sections 122.501(g) and 122.506(i) also provide that the executive director will publish in the *Texas Register* and on the commission's publicly accessible electronic media notice of the fact that two or more GOPs have been combined.

The commission amended §122.503(c)(3) and §122.504(a)(3)(B) to clarify that a permit holder will be issued a new, not a revised, authorization to operate when changes are made to the GOP application for a site. Section 122.503(c)(4) was amended to clarify that a permit holder operates subject to the representations identified in §122.140.

The commission amended §122.504 by deleting the phrase "revision or repeal" and replacing it with "promulgation or adoption." The commission made this change because the terms "promulgation" and "adoption" are inclusive of the terms "revision" and "repeal." However, the terms "revision" and "repeal" are not inclusive of the terms "promulgation" and "adoption" and this section was intended to address both new rules and regulations, as well as changes to rules and regulations. Also, the commission amended the heading for §122.504 so that it more clearly describes the contents of the section.

In addition, on September 4, 1998, the commission published a proposal in the *Texas Register* (23 TexReg 8987) to amend Chapter 122, Subchapter F authorizing the executive director to issue, revise, and rescind GOPs. Due to an administrative error, a portion of the proposed amendments to §122.506(a) was not designated as new rule language. Government Code, §2001.024(2) requires that rule text be prepared in a manner to indicate any words to be added or deleted from existing rule text. Because the new rule language was not completely underlined (underlining is the editorial indication for proposed new language), the commission could not adopt that portion of §122.506(a). The commission did adopt those portions of §122.506 that were correctly designated.

The language that was not underlined in the *Texas Register* in §122.506(a) required the executive director to publish the draft of a new GOP as follows: "The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating permit."

The commission amended §122.506(a) to address the administrative error made on September 8, 1998. Before the issuance, significant permit revision, or recission of any GOP, the executive director will be required to publish notice of the opportunity for public comment and/or hearing in the *Texas Register* and on the commission's publicly accessible electronic media. In addition, if the GOP has only regional application, the executive director must publish notice in a newspaper of general circulation in the area affected by the GOP; if the GOP has statewide application, the executive director must publish notice in the daily newspapers of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The commission believes that publication in the *Texas Register*, on the commission's publicly accessible electronic media, and through newspaper notices will provide ample notice to the regulated community and general public concerning the issuance, revision, or rescission of GOPs. The commission adopts rule language which requires publication in Austin, Dallas, and Houston because the commission believes that newspapers in these communities provide greater statewide coverage than do the Beaumont, Fort Worth, and Houston newspapers originally proposed September 8, 1998.

The commission has also deleted the statements in §§122.502(g), 122.503(i), and 122.505(h) specifying that the following shall not be final action by the executive director, and therefore, are not subject to judicial review: the granting of authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs. The commission repealed the specified subsections because they conflict with Texas Health and Safety Code, §382.032, which states, "A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County."

ACID RAIN PERMITS

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission amended §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76.

EPA offered some options to the states in the revision of 40 CFR 72 (Part 72) regarding acid rain permit issuance procedures. The revised 40 CFR §72.72(b)(1)(v) provides an option for "direct proposed" procedures which may be used at the discretion of the

executive director. In the preamble to the promulgated revised 40 CFR Part 72, EPA clarifies the "direct proposed" procedures as follows: "Under the procedure, a State permitting authority issues simultaneously a draft permit and proposed permit. If no adverse comments are received, the proposed permit is deemed to be issued and, after the period for review by EPA, the executive director issues the final permit" (62 FR 55467). The EPA Part 72 preamble also clarifies that the "Direct proposed" procedures which are available for initial issuance of acid rain permits are also available for significant acid rain permit revisions and acid rain permit reopenings. This option is only available for acid rain permits. Although Subchapter E does not have specific rule language for initial issuance, this option is available since it is being incorporated by reference into this subchapter. The commission also adopts this option for significant revisions and reopenings. However, because Subchapter E specifies the procedures for significant revisions and reopenings rather than relying on Part 72 requirements incorporated by reference, specific language has been added to §122.414(a)(3) and (4) to allow public notice and EPA review to run concurrently. The revisions to §122.414(a)(3) and (4), plus the new procedural option for initial issuance will allow the public notice and EPA review to run concurrently, resulting in a streamlined process. These procedures will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits.

Another option offered by EPA is for alternate public notice procedures in the revised section of 40 CFR §72.72(b)(1)(iii) where the "State may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication." The commission recognizes that this is an option that, if properly implemented and defined, could provide adequate public notice. The recent revisions to §382.056(b) by House Bill 801 during the 1999 Legislative Session include a new requirement for newspaper notices to provide instructions for how to get on a mailing list to receive information about an application. These requirements were recently incorporated into §122.320, concerning Public Notice. The commission believes that these new notice provisions will provide better public notice and access to information about specific applications, since the newspaper notice is widely available and persons who are genuinely interested can ask to be included on a mailing list. The commission believes that it is appropriate to continue to use the existing procedures for public notice in Chapter 122 that require newspaper notice for initial issuance. Consistent with this approach for initial issuance, the commission retained the procedures in §122.414(a)(3) and (4) for providing newspaper notice. The continued use of newspaper notice for initial issuance, significant revisions, and reopenings ensures a consistent form of notice for these acid rain procedures.

The commission adopts without changes amended §122.412(1)(B)-(D) concerning acid rain permit application due dates by removing the comma after the term "January 1, 2000." The purpose of the amendment is to provide consistency with the language in 40 CFR Part 72 and to improve clarity. For example, under §122.412(1)(B), the existing comma may incorrectly imply that the Phase II acid rain permit application submittal date for new units is the latter of "at least 24 months before January 1, 2000" or "before the date when the unit commences operation." By removing the comma, the commission clarifies that the submittal date is the latter of "at least 24 months before January 1, 2000" or "at least 24 months before commencing operation."

The commission also adopts without change revisions to the following subsections and paragraphs of §122.414, concerning Acid Rain Permit Revisions, as the result of revisions to the referenced paragraphs of 40 CFR Part 72. In §122.414(a)(1), the reference to 40 CFR §72.83(b) was changed to 40 CFR §72.83(b)(1) to be consistent with the revised procedural requirements for acid rain permit administrative amendments. Because §72.83(b)(2) and §72.83(c) are incorporated by reference and are not being replaced by procedures in Chapter 122, under the acid rain requirements, the executive director may make administrative revisions to acid rain permits on its own motion, provided the designated representative is notified 30 days before any change is made and is given a copy of the revision after it is made. This revision process allows the executive director, at his discretion, to make administrative revisions to the acid rain permit without receiving an administrative amendment application from the applicant to correct small changes (such as typographical errors) in the acid rain permit. In addition, §122.414(a)(1) maintains the requirement for the executive director to submit the administrative revision to EPA; however, the commission amended §122.414(a)(1) to remove the restriction of "no later than ten days after the final date of final action on the revision" to be consistent with the revised 40 CFR §72.83 for acid rain administrative permit amendments.

In order to be consistent with the provisions of 40 CFR 72 concerning notice for fast-track modifications, the commission revised §122.414(a)(2) to follow the provisions of §72.82 for fast-track modification and to delete the references to minor permit revisions under §122.216 and §122.217.Although the cross-references to minor permit revisions are deleted, the revised §122.414(2)(A) will require the application content for a fast-track modification to be consistent with what is required for minor permit revisions, except that the modification cannot be operated before the permit is revised; and therefore, provisional terms and conditions do not apply. Further, §122.414(a)(2)(B) sets out the criteria that must be met before the executive director can issue a fast-track modification. This criteria is consistent with the criteria to issue a minor permit revision. It is repeated in §122.414 in order to reduce the number of cross-references in the rule.

Section 72.82 requires designated representatives to send copies of fast-track modifications to the EPA, the permitting authority, and any person entitled to receive written notice under an approved operating permit program. The previous rule required the designated representative to provide copies of the fast-track modification to the executive director, the EPA, and any person entitled to written notice under §72.65(b)(1)(ii), (iii), and (iv). The revisions to Part 72 deleted the reference to §72.65(b)(1) and now require the designated representative to provide notice of fast-track modifications to the EPA, the permitting authority, and to any person entitled to written notice under an approved operating permit program. The adopted rules require the designated representative to provide a copy of the complete application for a fast-track modification to the executive director, the EPA, affected states, and local air pollution control agencies with jurisdiction in the county in which the site is located, which are the entities entitled to receive written notice under the Texas approved interim program. In addition, the adopted rules require the designated representative to provide a notification of the complete application for a fast-track modification to persons on a mailing list maintained by the chief clerk. The notification provided to persons on a mailing list is consistent with current

public notice requirements contained in §122.320 and would identify the public location of and opportunity to review and copy the complete application for a fast-track modification. The commission's chief clerk maintains mailing lists of persons who have indicated an interest in receiving information about specific sites, permitting, or other actions of the commission or about commission actions for sites located in a given county. If a person asks to be added to this mailing list, information on any proposed action to be taken on the particular commission action or on the particular county of interest will be mailed to that person. Upon request, the designated representative will be provided with this list, if any, so that interested persons will be notified of any proposed fast-track modifications.

For fast-track modifications, the commission adopts without change the deletion of provisions requiring the use of public announcement which are currently used for minor permit revisions under Subchapter C of Chapter 122. Section 72.82(a) requires the designated representative to provide notice in a newspaper of general circulation in the area where the source is located within five days of the submission of the application for the fast-track modification. This requirement to use newspaper notice will make the provisions of Chapter 122 for fast-track modifications consistent with Part 72 notice provisions. The rule sets out the specific sections in §122.320, concerning Public Notice, and §122.322, concerning Bilingual Public Notice, that must be used for fast-track modifications. Since §72.82 does not require hearings or public meetings for fast-track modifications, the references to those requirements in §122.320 and §122.322 were excluded from the final rule. This is consistent with TCAA, §382.056(a) which requires public notice for federal operating permits to be consistent with the requirements of that section and with federal requirements. Since §72.82 does not require hearings or public meetings, the commission does not believe it is appropriate or necessary to add those requirements for fast-track modifications. However, fast-track modifications must comply with the sign posting requirements, and if applicable, with the requirements for bilingual notice. The intent of a fast-track modification is to allow for expeditious changes to acid rain permits for changes that do not have a significant environmental impact. The commission believes that the notice provisions, which include an opportunity for public comment as well as EPA, affected state, and local program review, provide sufficient notice for the public to be able to comment on the proposed fast-track modifications. Section 72.82(b) requires comments to be submitted to the commission as well as to the designated representative. That requirement is included in §122.414(a)(2)(E), except that comments must be submitted to the executive director.

The commission amended §122.414(a)(2)(E) to change the length of time from 30 to 90 days after the close of the public announcement period that the executive director has to approve or disapprove a minor revision for acid rain permits according to the revised requirements of 40 CFR §72.82(d).

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted 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. 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 adopted sections are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse economic effects on affected emission units. Some of the affected emission units could constitute a sector or sectors of the economy. This rulemaking is not subject to any of the regulatory provisions of §2001.0225(c) because the adopted sections do not meet any of the four applicability requirements of §2001.0225(a). The adopted sections do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement, nor are these rules adopted solely under the general powers of the agency. The sections are adopted specifically to comply with federal periodic monitoring requirements, the federal CAM Program, federal acid rain rules, and numerous sections of the TCAA. See the STATUTORY AUTHORITY portion of this preamble.

TAKINGS IMPACT STATEMENT

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 rulemaking revised Chapter 122 to address two federally mandated monitoring programs: compliance assurance monitoring under 40 CFR Part 64 and periodic monitoring under 40 CFR §70.6(a)(3)(i)(B). The EPA states that "the general purpose of the monitoring required by 40 CFR 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit" (62 FR 54918). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements will reside in the new Subchapter H.

The other federal monitoring program addressed by this rulemaking is "periodic monitoring" in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of an emission unit's compliance with the permit. The commission has always had the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. This rulemaking provides an alternative streamlined approach, similar to that adopted for CAM, to implement periodic monitoring requirements. The requirements for the implementation of periodic monitoring reside in new Subchapter G.

The commission also amended existing sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, and to address an administrative error in a previous rulemaking. The commission deleted sections in Subchapter F, specifying that the granting of authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs are not final actions by the executive director, and therefore, are not subject to judicial review. The commission repealed the specified subsections because they conflict with Texas Health and Safety Code, §382.032, Appeal of Commission Action.

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission amended §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The revised 40 CFR Part 72 authorizes new public notice procedures that will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits. The commission adopts amendments which revise the minor permit revision process for acid rain permits by requiring newspaper notice instead of public announcement.

Texas Government Code, §2007.003(b)(4) applies to these amendments, since the action is reasonably taken to fulfill an obligation mandated by federal and state law. 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 governmental action. Consequently, these amendments do not meet the definition of a takings under Texas Government Code, §2007.002(5).

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, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the adopted rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Title 31 TAC §501.14(q) requires commission rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted pursuant to the Clean Air Act, 42 United States Code, §§7401 et seq., to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The adopted rules provide a regulatory structure for implementing CAM and also further clarify the commission's authority to require periodic monitoring. CAM and periodic monitoring are federal monitoring programs established under 40 CFR Part 64 and 40 CFR §70.6(a)(3)(B)(i), respectively. The implementation of the two monitoring programs is consistent with the previously stated goals and policies of the CMP. CAM and periodic monitoring requirements will not authorize the increase in air emissions, nor will they authorize new air emissions. The adopted rules also incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76, regarding acid rain requirements. Other revisions are necessary to conform to provisions of the TCAA.

PUBLIC HEARING AND COMMENTERS

The commission scheduled a public hearing on the proposed amendments to Chapter 122 on April 13, 2000. No individuals appeared to submit oral testimony at the scheduled time; therefore, the hearing was not convened. However, the commission received written comments from the following during the original public comment period which closed April 13, 2000: Baker Botts L.L.P., on behalf of the Texas Industry Project (TIP), Brown McCarroll & Oaks Hartline, L.L.P. (Brown McCarroll), City Public Service of San Antonio, Texas (CPS), Texas Chemical Council (TCC), TXU Business Services (TXU), and the United States Environmental Protection Agency (EPA).

The commission reopened the comment period on May 19, 2000 to receive written comments on the impact, if any, that the court decision *Appalachian Power Company, et al. v. Environmental Protection Agency* may have had on the proposed amendments to Chapter 122. Notice of extension of the comment period was published in the May 19, 2000 issue of the *Texas Register*. This second comment period closed on May 29, 2000, and the commission did not receive additional comments.

ANALYSIS OF TESTIMONY

Various commenters expressed support for the proposed amendments to Chapter 122. For example, TXU expressed support for the concept of using GOP to phase implementation of CAM and periodic monitoring into federal operating permits. TCC also expressed agreement with the use of a programmatic approach, as well as its appreciation to the commission for its efforts to provide a flexible, streamlined CAM implementation approach. CPS expressed support for the incorporation of periodic monitoring using the minor permit revision process contained in Subchapter C of Chapter 122.

The commission appreciates the support expressed in these comments.

Several comments were received concerning draft CAM GOP #1 and draft periodic monitoring GOP #1 which were offered for public comment concurrently with the public comment period for the amendments to Chapter 122. The final CAM GOP #1 and periodic monitoring GOP #1 are issued in accordance with Chapter 122, Subchapter F, concerning General Operating Permits. Since the commission delegated the authority to issue GOPs to the executive director, the executive director will respond to comments on both GOPs.

Notice of the executive director's final decision will be sent to all persons who commented. The notice will include a response to all comments, and identify any changes to the GOPs and the reasons for the changes. The notice will also describe the public petition process. The executive director's response to these comments will be published on the commission's publicly accessible electronic media (i.e., Internet home page) after these GOPs become effective.

CPS commented that passive control devices should be allowed to be used in the determination of potential to emit since those devices are excluded from the definition of control device adopted in §122.10. CPS commented that it should be realized that certain emission points may have passive control devices (such as hoods or enclosures) in addition to active control devices (such as fabric filters).

One of the CAM applicability requirements involves a determination of the potential to emit prior to any reductions from the use of a control device. Since an emission unit may use passive control measures prior to the use of a control device, the potential to emit, as limited by the passive control measures, is what will determine CAM applicability. The definition of "Control device" in §122.10(6) is consistent with the definition in 40 CFR Part 64, since it excludes passive control measures from consideration as a control device. Passive control measures may be used in the determination of potential pre-control device emissions.

CPS commented that it would like the incorporation of CAM requirements to coincide with the GOP permit renewal to the extent possible. CPS explained that because of the proposed requirement to incorporate CAM as significant permit revisions, it would like language to be added which would allow permit renewals that are within two years to be allowed to incorporate CAM at the same time in order to avoid expensive public notifications and time periods associated with such revisions.

In response to this comment, the commission emphasizes that Subchapter H provides permit holders the flexibility to choose one of two methods to implement CAM. Permit holders electing to use the CAM GOP implementation mechanism will use the minor permit revision process. The minor permit revision process requires public announcement which is a public notice procedure that the executive director posts on the commission's publicly accessible electronic media at no cost to the applicant. Permit holders electing to use the CAM case-by-case determination implementation mechanism will use the significant permit revision process. An explanation of the necessity for a different revision process for each implementation mechanism is contained in the preamble. In addition, the commission believes that the implementation schedule in §122.704 is reasonable for the reasons stated in the preamble. Subsequently, no changes were made to the rule in response to this comment.

TCC submitted comments on the application submittal schedule in §122.604, Periodic Monitoring Application Due Dates, and §122.704, Compliance Assurance Monitoring Application Due Dates. TCC expressed concern that §122.704(1) might require a CAM application within 30 days of the permit anniversary date if that date coincided with issuance of the GOP. TCC recommended that CAM applications be due at permit renewal or 24 months after the issuance date of a CAM GOP containing the emission limitation or standard applicable to an emission unit, whichever is later. TCC commented that this change would provide for consistency, fairness, and simplicity in the application submittal schedule.

As stated previously, the commission believes that the reasons presented in the preamble as justification for §122.704, concerning Compliance Assurance Monitoring Application Due Dates, remain compelling. The adopted application submittal schedule allows permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM requirements. It also allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs. Finally, the adopted submittal schedule provides for the submittal of applications throughout a calendar year, not all at once. This schedule will allow the executive director to review applications in a more timely fashion than if all applications were due at the same time. By contrast, the commenter's suggestion would result in the submittal of the majority of applications 24 months after the issuance of a CAM or periodic monitoring GOP or at renewal. Consequently, no changes were made to the rule language in response to this comment.

TXU questioned the applicability of CAM to facilities subject to the 20% opacity limit contained in 40 CFR §60.252(c). TXU commented that it is not possible to qualify a facility as having the potential to emit 100 tons of opacity and cited the fact that CAM requirements apply to emission units that have a pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source.

40 CFR §64.2(a)(1) expressly states that CAM applies to emission units subject to an emission limitation or standard for the regulated air pollutant or a surrogate thereof. Opacity is a surrogate of particulate matter. Therefore, an emission unit subject to an opacity standard, such as that contained in 40 CFR §60.252(c), may be subject to CAM provided the remainder of the CAM applicability criteria are satisfied. Consequently, the rule has not been changed in response to this comment.

Brown McCarroll commented that the attempt to address all aspects of case-by-case and GOPs in each section has resulted in a confusing implementation approach to CAM and periodic monitoring. The commenter stated commented that this is further complicated by the vague nature of the GOP implementation process and the fact that these are permits when they should be permit terms. Brown McCarroll recommended that the rulemaking maintain the federal rule requirements contained in 40 CFR Part 64 with minor adjustments and that the entire concept of streamlined monitoring protocols be addressed as alternatives to the case-by-case review process. By incorporating the federal language, the confusion from reinterpreting the federal requirements and then melding them with a streamlined approval process (the use of the GOPs and enforceable applications) could be avoided. The process can be maintained by allowing a permit holder to reference a list of "executive director approved" monitoring plans and associated draft permit provisions which have been through public notice. Then, the permit holder, using these protocols, could apply for a minor permit revision to incorporate the requirements. Brown McCarroll suggested that this approach would more precisely accomplish the goals of the proposed amendments.

The commission believes that the reasons presented in the preamble as justification for a streamlined CAM implementation approach remain compelling. Furthermore, the commission believes that the approach adopted today conforms to the commenter's recommendation. In response to the commenter's concern that the proposed rules confusing, the commission has moved the case-by-case determination out of §122.700. The information is more appropriately identified in other sections of Subchapter H and is now identified in §§122.706, 122.708, and 122.714. The adopted rules necessarily address each implementation method in the context of the existing Chapter 122 framework. Under the adopted rule, owners and operators have the flexibility to use the CAM GOP implementation approach or the CAM case-by-case implementation approach, which mirrors 40 CFR Part 64.

The commenter recommended that the rulemaking maintain the federal requirements contained in 40 CFR Part 64 and use the concept of "executive director approved" monitoring protocols with a one- time notice process. The TCAA federal operating permit provisions do not authorize the issuance of "executive director approved" monitoring plans with a one-time notice process.

The TCAA provides the authority for the commission to issue federal operating permits and GOPs only and not monitoring protocols. A GOP, by its terms and conditions, is intended to be an alternative to case-by-case permitting. Furthermore, it goes through the public notice process when it is first issued, and for certain revisions and renewals. If the CAM and periodic monitoring protocols were used, they would be simply treated as permit terms and conditions because the TCAA does not authorize the issuance of monitoring protocols. In effect, the monitoring protocols would be subject to case-by-case review since they would not be in GOPs. For these reasons, the commission did not change the rule in response to this comment.

Brown McCarroll, TCC, and TIP expressed concern that the proposed amendments to Chapter 122 make GOP applications enforceable. Brown McCarroll indicated that owners and operators would be penalized for the innocent submission of erroneous information. Under federal rules, CAM submittals are not subject to enforcement action; submittals are merely proposals for approval. Once approved, they become permit conditions which are enforceable. TCC objected to enforceable permit applications since, upon approval, the monitoring requirements become permit terms. Owners and operators, and the executive director, would be required to track the most minute detail contained in an application. TCC added that different levels of detail may be provided in CAM plans and some owners or operators may provide minimal detail to avoid enforcement. TCC recommended that each plan be reviewed on its own merits, but that the commission reduce the plans to specific enforceable permit terms. In addition, Brown McCarroll maintained that enforceable CAM GOP applications are beyond state law and 40 CFR Part 64. TIP expressed concern that the definition would lead to confusion and inconsistency with regard to what elements of a CAM application are enforceable. The CAM GOP itself should contain the necessary level of detail for enforceability without the need to incorporate the details of the application. While the procedures for promulgating CAM requirements will follow the GOP procedures, the CAM GOP should not be treated in all respects as an operating permit. The CAM GOP will not authorize the operation of an emission unit, but rather will constitute an applicable requirement. TIP noted that EPA has discouraged the incorporation of applications into operating permits in its July 1995, White Paper. TIP requested that the commission not adopt a definition for "enforceable GOP application," but instead amend §122.140(2).

The commission has changed the rules in response to these comments. The adopted rules do not contain a definition for the term "Enforceable GOP application," and all references to this term have been deleted from the adopted rules. The purpose of the term was to assign a name to those representations in a permit application that become conditions under which a permit holder shall operate. Those representations are expressly identified in §122.140 and would have been given the name of enforceable GOP application. The commission believed that the proposed term would clarify the rules and make some aspects of new Subchapters G and H more understandable. Based on comments received by the commission, the term did not serve its purpose and is being removed from the rules. Subsequent definitions in §122.10 have been renumbered. The comments also indicate that clarification is warranted regarding which representations in a CAM GOP or periodic monitoring GOP application become conditions under which a permit holder shall operate. Therefore, the commission has amended §122.140 and §122.502 to indicate that upon the granting of an authorization to operate under a CAM GOP or periodic monitoring GOP, representations in a permit application required by §122.714(a) and §122.612, but excluding the justification for those representations, are conditions under which a permit holder shall operate.

Brown McCarroll and TCC commented that proposed §122.712(a)(6)(A) is not consistent with 40 CFR Part 64. They commented that proposed §122.712(a)(6)(A) require a permit holder to apply for a revision to CAM requirements if the permit holder identified a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not indicate a deviation while providing valid data; however, Part 64 requires a permit modification only if "necessary." TCC noted that the federal requirements in 40 CFR §64.7(e) only mandate notification to the permitting authority of these situations. TCC recommended that the commission adopt the federal language in order to avoid permit revisions that may be unnecessary.

In response to these comments, the commission has amended §122.712(a)(6) to indicate that a permit holder shall, if necessary, apply for a revision to CAM requirements or for a new permit, when appropriate, if §122.712(a)(6)(A) or (B) are satisfied. The commission agrees with the commenter that a notification period is required by §64.7(e) and is appropriate for these types of occurrences. Thus, the commission amended §122.712(a)(6) to incorporate the notification requirements of §64.7(e). The inclusion of a 30-day notification period will provide permit holders a reasonable amount of time to submit the notifications after the data has been assessed.

TCC recommended that the term "CAM GOP" be deleted from §122.10 and replaced with the term General CAM Operating Provisions." TCC commented that a permit authorizes operation of an emission unit and that a CAM GOP does not serve this function because CAM is an applicable requirement of Part 70. In addition, TCC commented that characterization of the CAM monitoring options as a CAM GOP creates confusion in Chapter 122 since it would be unclear whether the phrase "GOP" referred to a traditional GOP or a CAM GOP. Finally, TCC commented that the word "permit" is not necessary to establish enforceability. The commission has the authority to specify CAM or periodic monitoring provisions in a standalone document which is neither part of a permit or rule.

As stated in the preamble, the commission has elected to use a programmatic approach for the implementation of CAM. The most efficient method for implementation of this approach is to use GOPs, since Chapter 122 contains a framework for the issuance, revision, renewal, and recission of GOPs. The commenter recommended the use of "General CAM Operating Provisions." The TCAA federal operating permit provisions do not authorize the issuance of General CAM Operating Provisions. As discussed previously, the TCAA provides the authority for the commission to issue federal operating permits and GOPs only. If the CAM and periodic monitoring operating provisions were used, they would be simply treated as permit terms and conditions, because the TCAA does not authorize the issuance of general operating provisions. In effect, the operating provisions would be subject to case- by-case review since they would not be in GOPs. For these reasons, the commission did not change the rule in response to this comment. The commission does not agree with the commenter's assessment that a CAM GOP does not authorize operation of an emission unit.

Since CAM is an applicable requirement of Part 70, failure to comply with that requirement could result in enforcement. In that

regard, a CAM GOP through the permit for the site or the authorization to operate does authorize operation of an emission unit for an applicable requirement.

The commission agrees that some confusion may have been caused by using the GOP process to implement CAM. As defined in §122.10, a permit includes CAM GOPs. However, in some sections of Chapter 122, the word permit is used in such a way that it does not refer to CAM GOPs. Therefore, the commission has amended the definition of "Permit" contained in §122.10 to state that the term "permit" when used in Chapter 122 refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context.

The commission agrees that a GOP is not necessary to establish the enforceability of CAM provisions, since CAM can be implemented on a case-by-case basis. However, consistent with the programmatic approach, it is necessary to implement the CAM requirements through GOPs. The commission reiterates that the programmatic approach provides permit holders the flexibility to use a case-by-case determination to implement CAM requirements. Consequently, the commission has not changed the rule in response to this comment.

TCC requested confirmation that the following is an accurate statement of the relationship between a CAM GOP and a federal operating permit: A CAM plan is a standalone document which is referenced in the Title V permit. Any revisions to the CAM plan do not necessarily impact the Title V permit. However, in certain cases, revisions to the Title V permit may result in necessary changes to CAM plans. TCC also commented that §122.217(b) should clarify that owners and operators are not required to revise a federal operating permit because of revisions to a CAM GOP unless the revisions to the CAM GOP affect the applicability of that CAM GOP to an emission unit. TCC's support for this request is the fact that enforceability of a CAM GOP is established through the CAM GOP.

The commission interprets the commenter's reference to "CAM plan" to mean "CAM GOP." The commission agrees with the commenter that revisions to CAM GOPs do not in all cases result in revisions to a federal operating permit. It is also true that some revisions to a federal operating permit may result in changes to CAM requirements. Therefore, the commission added the phrase "as appropriate" to §122.217(b) to further clarify this issue.

Although changes to a CAM GOP may not affect the applicability of that GOP to an emission unit, it could affect, for example, the deviation limit established for that emission unit. There may be changes to a CAM GOP which result in other changes to the federal operating permit. The commission made no changes to the rule in response to this comment.

TCC requested that the commission clarify the terms "Deviation" and "Deviation limit" because they are too broad as defined. TCC recommended that the term "Deviation limit" be deleted from §122.10 and replaced with the term "Deviation indicator bounds" because a limit implies a standard which must not be exceeded. TCC commented that a deviation limit is a gauge of performance within a certain range of conditions which may or may not indicate noncompliance and, therefore, the term "Deviation indicator bounds" may be more appropriate. As an alternative, TCC recommended the use of the terms "Excursion" and "Indicator range" which are contained in 40 CFR Part 64.

A deviation is any indication of noncompliance with a term or condition of the permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit. As explained previously, the commission elected not to use the Part 64 terms "Excursion" and "Exceedence" because the Chapter 122 term "Deviation" encompasses both Part 64 terms. A "Deviation" is an indication of noncompliance, and not necessarily a violation. In addition, since "Deviation" is defined as an *indication* of noncompliance with a permit term or condition, the commission chose not to use a term such as "deviation indicator bounds" or "indicator range" because of the circular nature created by these terms and the definition of deviation limit. The term "Deviation limit" sets the boundary for an indicator of performance; operation beyond that boundary is a deviation. The rule has not been changed in response to this comment.

In addition, the definition of "Deviation" was proposed to be revised to include a reference to "enforceable GOP applications." Since the term "Enforceable GOP application" has been deleted from the rule and the CAM GOPs are considered permits, the term "deviation" has not been amended.

TCC requested confirmation that the following is an accurate statement: An indicator range or a deviation indicator bounds is set on the monitoring equipment itself (monitoring range, manufacturing specifications, and the like) or on specific process parameters (temperature, pressure, and the like) or on specific work practices which provide an indication of performance. Such details are established in the CAM GOP and referenced in the Title V permit. The indicator range depends upon the monitoring mechanism.

For the reasons previously stated, Chapter 122 contains the term "Deviation limit." Thus, in responding to this comment, the commission substituted the term "Deviation limit" for the terms "Indicator range" and "Deviation indicator bounds." Generally, the commission agrees with the commenter's statement about the relationship between a deviation limit and a monitoring plan. The deviation limit is set on the indicator of performance for the emission unit or control device. Indicators of performance can be process parameters, work practices, or direct measurements of emissions. Deviation limits are designated values or conditions which establish the boundary for the indicator of performance. Deviation limit examples include the following: minimum temperature, minimum pressure drop, no visible emissions, an open valve, or the results of an inspection maintenance program. The commission also agrees that the indicator range depends upon the monitoring mechanism.

TCC recommended deleting the phrase "including appurtenances" from the definition of emission unit as proposed in §122.10. TCC commented that all appurtenances of emission units are not necessarily an emission unit or part of an emission unit. TCC cited a walkway or platform on a stack as an example of an appurtenance that is not an emission unit or part of an emission unit. TCC believes the amendment unnecessarily broadens the definition of emission unit.

As stated in the preamble, the commission revised this term to be more consistent with the term "Dacility" in the TCAA and the definition of "Emissions unit" in 40 CFR 70. The amendment should clarify that some appurtenances, such as a control device, may be subject to an applicable requirement that must be codified in a federal operating permit. The commission notes, however, that some appurtenances, such as a platform, should not be identified in a federal operating permit to the extent they

are not subject to an applicable requirement. In such a case, a permit revision would not be necessary if an owner or operator elected to remove the platform, for example. Consequently, the rule has not been changed in response to this comment.

TIP and TCC recommended that the definition of "Predictive emission monitoring system (PEMS)" proposed in §122.10 be clearly distinguished from the term as used in 30 TAC Chapter 117 to prevent confusion between the two terms. In addition, TCC objected to the use of the phrase "emission limitation or standard" which is contained in the proposed definition. TCC proposed the following definition of PEMS: a system that uses process or other parameters to predict compliance in terms of applicable emission values. They also gave the example of a cap and trade program, where NO_x emissions from a source might be calculated via a PEMS. However, the NO_x calculated from any individual source, in this example, would not be the "limit" or "standard" for the facility. Also, the simple reduction or manipulation of data place it into the same terms of the standard is not necessarily part of the PEMS.

The definition of PEMS in Chapter 122 mirrors the Part 64 definition of PEMS and states that this definition of PEMS only applies to Subchapter H CAM requirements. The preamble to 40 CFR 64 states that the definition was added to 40 CFR 64 because 40 CFR §64.3 sets forth special criteria for the use of PEMS when employed to fulfill 40 CFR 64 requirements (62 FR 54911). For similar reasons, the definition was added to Chapter 122 because §122.706(d) and §122.714(c) reference PEMS.

With respect to the alternative definition proposed by TCC, the commission believes that the term "Emission limitation or standard" is appropriate and consistent with 40 CFR 64. The commission interpreted the term "source" in the commenter's example of a cap and trade program to mean a site with individual emission units where the site has an overall cap and there are no separate cap limitations for each emission unit. In this example, the PEMS readings for each individual emission unit, based on the Chapter 122 definition of PEMS, would not be considered a standard. The definition in Chapter 122 states that the monitoring system will produce values in "terms" of the applicable emission limitation or standard, which means that compliance with the emission limitation or standard is still based on the structure of the underlying applicable requirement. The commission did not make changes to the rule language in response to this comment.

TIP recommended that the definition of "Control device" proposed in §122.10 be clearly distinguished from the term as used in 30 TAC §101.1.

In response to this comment, the commission has amended §122.702(a) to state that the term "Control device," as used in Subchapter H, shall have the meaning defined in §122.10(6). This change should clarify that the term "Control device" defined in §122.10(6) applies exclusively to the CAM requirements in Subchapter H.

TCC supported the proposed amendment to §122.130(a)(1), which changes the phrase "owner and operator" to "owner or operator." TCC commented that it appreciates the commission's recognition that the changing face of business has led to contractual relationships that provide for differing ownership but operations under common control.

The commission appreciates the support expressed in these comments.

TCC recommended revising §122.142 to clarify that it only applies to the Title V Operating Permit and not to CAM GOPs or periodic monitoring GOPs. TCC commented that this further illustrates the confusion caused by naming CAM plans "General Operating Permits."

In response to this comment, the commission has amended §122.10(17) to state that the term "Permit" refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context. For example, this change clarifies that §122.142(c) does not apply to CAM GOPs. As discussed previously, the commission has elected to use a programmatic approach for the implementation of CAM. The most efficient method for implementation of this approach is to use GOPs, since Chapter 122 contains a framework for the issuance, revision, renewal, and recission of GOPs.

TCC commented that the phrase "separate authority," contained in amended §122.161(d), is unclear. TCC commented that the interprets separate authority to mean any authority other than authority granted under the Clean Air Act, for example, Resource Conservation and Recovery Act, or Clean Water Act. TCC believes that the intent of Subchapter G or H is to justify the approval of monitoring under all Clean Air Act requirements, whether promulgated by TNRCC, EPA, or other air pollution jurisdiction.

In response to this comment, the commission has amended §122.161(d) to clarify that "separate authority" is the TCAA, FCAA, or an air pollution control agency having jurisdiction.

TCC requested that the commission clarify that the term "Permit holder" in §122.210(b) refers to the Texas Natural Resource Conservation Commission. TCC noted that this furthers its concern that the use of the term "CAM or periodic monitoring GOP" is easily confused with the Title V Operating Permit because the term "Permit" is loosely used in the rulemaking.

"Permit holder" is defined in §122.10(20) as a person who has been issued a permit or granted the authority by the executive director to operate under a GOP. Thus, the term "Permit holder" in §122.210 refers to an owner or operator of a site that was initially issued a site-wide operating permit, as opposed to granted the authority to operate under a traditional GOP. Section 122.210 identifies the cases when a permit holder would need to revise their permit as the result of a change at a site, adoption or promulgation of a rule, or a change in the CAM or periodic monitoring GOP. The procedures that the executive director would use to revise the CAM GOP or periodic monitoring GOP are found in Subchapter F. The rule was not changed in response to this comment.

TCC requested that §122.213(d) be amended by replacing the word "shall" with the word "may," stating that there should be no need to submit an application for a permit revision if there are no administrative changes.

If a change occurs that triggers the applicability provisions for an administrative permit revision under §122.211, then under the provisions of §122.213 the permit holder is required to submit an application for a permit revision. Until this occurs, permit holders are not required to submit applications. The rule has not been changed in response to this comment.

TCC recommended that the commission amend §122.322 to indicate that for revisions to General CAM/PM Operating Provisions which are deemed minor and satisfy necessary protocols,

the executive director can approve as a case-by-case revision without further public notice.

As previously discussed, Chapter 122 contains the term "CAM GOP." Thus, in responding to this comment, the commission substituted the term "CAM GOP" for the term "General CAM/PM Operating Provisions." TCC referred to §122.322, concerning Bilingual Public Notice; however, representatives of TCC clarified that they intended to suggest a process that would allow a permit holder to propose minor revisions to the CAM provisions that are similar to the one contained in a GOP without additional public notice. Revisions to case-by-case determinations are governed by Subchapter C, which includes public announcement for minor revisions which the executive director posts on the commission's publicly accessible electronic media. Although revisions to CAM GOPs may be minor, a similar revision to a case-by-case determination may raise issues unique to circumstances at the site. As a result, the commission believes that the public announcement procedure for minor revisions is still appropriate for these changes. In addition, it would be extremely difficult for the executive director to determine which types of changes to CAM GOPs would require a corresponding public announcement for case-by-case determinations and which changes would not. The rule has not been revised in response to this comment.

TCC supported the proposed amendment to §122.350, concerning EPA Review, which allows the EPA review period and the public comment period to run concurrently. However, TCC recommended that the commission amend §122.350 by replacing the phrase "no earlier" with the phrase "no later."

The commission proposed amending §122.350 so that the commission will be able to establish a GOP more quickly to fulfill the 40 CFR 70 requirements. The amendment to §122.350 accomplishes this goal. In order to maintain consistency with §122.350(b)(2), the commission has not revised the rule in response to this comment.

TCC recommended that the commission amend the heading for §122.501 from "General Operating Permits" to "Title V General Operating Permits."

Section 122.501 governs all general operating permits, including CAM GOPs and periodic monitoring GOPs. The heading "Title V General Operating Permits" would imply that only traditional GOPs (e.g., Oil & Gas, Bulk Fuel Terminal, etc.) are covered in this section. The rule has not been changed in response to this comment.

TCC recommended amending the introductory sentence in §122.501(d), concerning General Operating Permits, by adding the phrase "as follows" after the phrase "by the executive director."

Because the commission did not propose amendments to the introductory sentence in §122.501(d), the commission is unable to make the suggested revision. Therefore, the commission did not make any changes to the rule in response to this comment.

TCC recommended that the commission amend proposed §122.501(g) to indicate that notice as required by §122.506 will be provided for any proposed permit combination.

The requirements of §122.506 concern notice for issuance, significant revision of, and rescissions of GOPs. Section 122.506 requires notice in newspapers, the *Texas Register*, and on the commission's publicly accessible electronic media. Since the combination of GOPs is not a substantive change, the commission believes that a notice in the *Texas Register* and on the commission's publicly accessible electronic media is sufficient. Therefore, §122.501(g) was amended and §122.506(i) added to state that notice will be published in the *Texas Register* and posted on the commission's publicly accessible electronic media when the executive director combines two or more GOPs.

TCC commented that it believes §122.504, concerning Application Revisions When a General Operating Permit is Revised or Rescinded, applies to traditional GOPs and is not applicable to CAM GOPs.

Section 122.504 applies to all application revisions when a GOP is revised or rescinded. This includes revisions to CAM GOPs. As stated previously, some revisions to CAM GOPs may not require a revision to the GOP application. Rule language was added to this section to clarify that changes to CAM GOPs may result in revisions to the GOP application.

With regard to §122.502, TCC reiterated its objection to provisions in the proposed rule that would make the representations in an application for a monitoring GOP enforceable. TCC commented that the characterization of monitoring requirements as permits rather than permit terms is beyond 40 CFR 64 and that the permitting authority must either approve a CAM plan, reject it, or approve it with conditions. Enforcement of the plan itself will lead to unequal treatment and a reluctance to submit detailed plans.

As previously discussed, §122.140 has been amended to identify those portions of the CAM and periodic monitoring requirements that become conditions under which a permit holder shall operate. The framework for implementing the programmatic approach exists for GOPs under Chapter 122 and not permit terms or general operating provisions. Finally, the executive director will review the CAM applications or plans and identify the appropriate permit terms and conditions. Therefore, only certain portions of CAM applications are enforceable.

TCC recommended that the commission delete from §122.504(a) the phrase "promulgation or adoption," as proposed, because this phrase is inconsistent with the purpose of the section, which is permit revisions.

Section 122.504 contains the procedures for revising GOP applications to address rule changes (i.e., the promulgation or adoption of an applicable requirement or state only requirement). Therefore, the phrase "promulgation or adoption" is appropriate for this section, and the rule has not been changed in response to this comment.

TCC recommended that the commission correct a typographical error appearing in §122.506(a). The word "recission" should be spelled "rescission."

The commission appreciates the comment and has corrected the misspelling.

TCC commented that new source review (NSR) permits might serve as templates for the identification of monitoring options that might appear in CAM GOPs. This would be similar to using maximum available control requirements (MACT) requirements as a template for General CAM Operating Provisions even if the source is not subject to the particular MACT standard. TCC suggested that §122.602(3) be clarified as requested in its comments on CAM applicability and §122.702(c)(6).

During the development process for CAM GOPs and periodic monitoring GOPs, the executive director will review typical NSR permit provisions to identify monitoring options that are suitable

for the CAM GOP. For example, the executive director reviewed several NSR permits and guidance documents in the development of CAM GOP #1 and periodic monitoring GOP #1 which were proposed concurrently with the proposal of this rulemaking. This review process will continue during the development of future CAM GOPs and periodic monitoring GOPs. The rule has not been revised in response to this comment.

TCC recommended that the commission amend proposed §122.602 and §122.702(c) to indicate that all requirements exempt from Subchapter H satisfy Subchapter G, since any monitoring which satisfies CAM also satisfies period monitoring.

Adopted §122.600(c) contains a statement that compliance with Subchapter H satisfies Subchapter G. The rule language was not changed in response to these comments since §122.600(c) covers this issue.

TCC recommended that the commission clearly differentiate between the CAM and periodic monitoring GOP application due dates contained in proposed §122.604 and §122.704 and the actual dates for compliance with those plans.

In response to this comment, the commission added subsection (a)(2) to §122.714 and subsection (b)(2) to §122.612, which states that unless otherwise approved by the executive director, the permit holder shall conduct the monitoring required upon revision or renewal of the permit or the granting of the authorization to operate that includes these requirements. These additions should clarify when compliance with CAM requirements must begin. Sections 122.704 and 122.604 exclusively contain the schedule for when a CAM application is due to the executive director.

TCC commented that if the commission revises a CAM GOP, a permit holder should have at least 180 days to implement the change, seek case-by-case monitoring provisions, or request additional changes.

If the CAM GOP or periodic monitoring GOP is revised, the executive director will be sensitive to the need for reasonable compliance dates. In some cases, a change could require longer than 180 days to implement or in other cases less than 180 days. An applicable requirement may also have a compliance date which is independent of a CAM or periodic monitoring compliance date. Since there is a need to remain flexible with regard to compliance dates, the rules have not been revised in response to this comment.

TCC requested clarification of the intent of proposed §122.608(e) and §122.708(d). As written, §122.608(e) seems to imply that any operational change which is implemented at a site with a minor or administrative revision would require a revision to underlying monitoring requirements prior to authorization to operate. TCC also recommended that the commission amend §122.608(e) and §122.708(d) to allow for the operation of changes to deviation limits before the federal operating permit is revised if the deviation limit results in a more strict monitoring.

The purpose of §122.608(e) and §122.708(d) is to make clear that once CAM requirements have been incorporated into a permit, or the application if a site is operating under a traditional GOP, revisions to those requirements will be governed by Subchapter C and Subchapter F, respectively. Changes not involving CAM requirements will go through the normal revision tracks in Subchapters C and F; those changes for minor and administrative revisions can be made without prior approval. Changes to these CAM requirements will require revision of the permit, as appropriate, and each of these subchapters already contains the framework appropriate for addressing revisions.

Deviation limits are a critical component of the approach in Subchapter H and over which an owner or operator may have significant discretion. The commission believes that it would be difficult to predetermine criteria for the establishment of deviation limits that may result in more stringent monitoring. However, the commission did amend the rules to expand the cases for deviation limit changes that do not require prior approval. In the proposal, only deviation limit changes that were not a result of a change in an emission limitation or standard could be done without prior approval. Therefore, §122.608(e) and §122.708(d) allow deviation limit changes to occur without prior approval as needed to respond to the promulgation or adoption of an applicable requirement.

TCC recommended that the commission revise §122.706(d) to indicate that the use of CEMS satisfies the requirements "for that standard for that pollutant" versus "for this subchapter."

As required by 40 CFR §64.3(d)(1), §122.706(a)(4) (originally proposed as §122.706(d)) specifies that owners or operators of emission units subject to applicable requirements that require CEMS, PEMS must submit a CAM GOP monitoring option that includes the use of the CEMS, COMS, or PEMS to satisfy CAM requirements for the other emission limitations or standards that are subject to CAM for that particular emission unit. The commenter's suggested language would narrow this requirement to only require the use of CEMS, PEMS, or COMS to satisfy CAM for those standards that already require their use. In order to remain consistent with Part 64, no changes were made to the rule in response to this comment.

TCC recommended that the commission correct a typographical error appearing in proposed §122.708(c). The phrase "of this title" which appears after the second parenthetical phrase should be deleted.

The commission appreciates the comment and has corrected the error.

TCC recommended that the commission delete the phrase "summary information on the number" from proposed §122.712(a)(3)(B), because there is no reason to sum the number of incidents. A listing of monitoring downtime incidents should be sufficient without a requirement for additional data fields to "count" events.

The commission has deleted the requirement to keep records of summary information on the number of monitoring downtime incidents. The commission agrees with the commenter that the listing of monitoring downtime incidents including the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable) is sufficient.

TCC recommended that the commission delete §122.712(a)(5)(B) because a planned or excused start-up and shut-down should not be considered a deviation.

40 CFR §64.7(d) requires certain actions of owners or operators upon detection of an excursion or exceedance. As explained previously, the commission considers excursions and exceedance to be deviations. The commission believes that 40 CFR §64.7(d)(1) contemplates the reporting of events during startup or shutdown to be in the category of deviation. The

commission has defined deviation as any indication that a permit term or condition may not have been met, not necessarily that a violation has occurred. In order to be consistent with Part 64, the commission did not revise the rule in response to this comment.

TCC commented that it objected to a statement contained in the preamble which indicates that an inaccurate deviation limit established based on erroneous information in the justification would result in an enforcement action (25 TexReg 1988). In addition, CAM plans (or "applications" as the term is used in the proposal) should not be enforceable documents. TCC objected to this characterization, because there may be many instances where a permit holder submits a justification using information that is normally reliable, but later is found to be erroneous. In the event that false information was knowingly submitted to the commission, there is adequate enforcement authority under the Texas Clean Air Act to appropriately penalize a permit holder. Furthermore, the commission has already stated that the justification is not a necessary permit term, and if the commission disagrees with a justification, either during its review or at some time after the plan is approved, it may either disapprove the plan or rescind the permit and require the permit holder to submit a permit revision.

In the preamble, the commission clarified that the justification for the deviation limit will not be included in the permit or be considered representations in GOP applications under which the owner or operator must operate. The justification is instead supporting information for the deviation limit and not conditions under which the owner or operator must operate. Therefore, once the deviation limit is approved, inclusion of the justification in the permit is unnecessary.

The commission also clarified that if after permit issuance, the deviation limit appears to have been based on erroneous information in the justification and the deviation limit is incorrect, a permit holder may be subject to enforcement action because the deviation limit does not provide a reasonable assurance of compliance and provide for operation and maintenance of the control device. The enforcement action would not be based on the erroneous justification. Although the justification for those values are not conditions under which the permit holder must operate, the commission wanted to clarify the importance of developing deviation limits based on sound and reliable information. No changes were made to the rules in response to this comment.

TIP recommended that the commission defer adoption of the current rulemaking pending a thorough evaluation of the *Appalachian Power* decision. TIP commented that the commission's proposed rulemaking is directly governed by *Appalachian Power*, since the commission's current rulemaking follows the overturned approach, which required the states to evaluate applicable requirements for the sufficiency of their periodic monitoring, and to add monitoring requirements where the rules are judged deficient in that area. TIP further commented that by establishing a GOP designed to add periodic monitoring requirements to Title V applicable requirements, the rule must take account of the court's mandate.

On April 14, 2000, the United States Court of Appeals for the District of Columbia Circuit decided *Appalachian Power Company, et al., v. Environmental Protection Agency. Appalachian Power* set aside, in its entirety, EPA's "Periodic Monitoring Guidance for Title V Operating Permits Programs," released in September 1998. The court stated that "state permitting authorities may not, on the basis of EPA's Guidance or 40 CFR §70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test."

In response to TIP's comment, the commission extended the public comment period on this rulemaking ten days to receive comments on the impact, if any, of the *Appalachian Power* decision on the proposed revisions to Chapter 122. Notice of the extension was published in the May 19, 2000 issue of the *Texas Register*; the comment extension period ran from May 19 to May 29, 2000. The commission received no comments during the extension period.

The commission has reviewed *Appalachian Power* and determined that it does not impact this rulemaking for the following reasons. First, the commission has not and did not use EPA's periodic monitoring guidance document in the manner prohibited by the court, that is, the commission has not and did not use the periodic monitoring guidance document to require in permits that a regulated source conduct more frequent monitoring of its emissions than that provided in an applicable State or federal standard. Second, this rulemaking codifies the legitimate purpose of 40 CFR §70.6(a)(3)(i)(B) expounded by the court, that is, it creates a framework for the implementation of periodic monitoring for standards that require no periodic testing, specify no frequency, or require only a one-time test. The commission notes that periodic monitoring GOP #1, offered by the executive director for comment concurrently with this rulemaking, provides periodic monitoring options for standards that require only a one-time test. Thus, neither Subchapter G nor periodic monitoring GOP #1 exceed the court's holding. Since no comments were received concerning any adverse impacts of *Appalachian Power*, and since the commission believes both Subchapter G and periodic monitoring GOP #1 are in accord with *Appalachian Power*, the commission has chosen not to defer adoption of the rule or the GOP.

EPA commented that should the commission rely on the permit applications as enforceable documents, the EPA regional office should have "real time" access to the applications. The Air/Toxics Inspection and Coordination Branch is responsible for conducting facility air inspections. Preinspection procedures include the review of permits and other related documents. Along with the Title V permit, the permit application is reviewed prior to the inspection. Therefore, the commission should provide "real time" access to GOP applications and other information which identifies the emission unit and the monitoring requirements. EPA would like to work with the commission by having access to specific information by way of the commission's information management system.

The commission will work with EPA to provide up-to-date application information in a reasonable time frame.

EPA requested that the commission complete a checklist for the CAM-related amendments to Chapter 122 to demonstrate that these changes satisfy the provisions of 40 CFR Part 64.

The referenced checklist appears to be a useful tool for the EPA to verify that amendments to Chapter 122 meet the requirements of 40 CFR Part 64. The commission believes this request to complete the checklist is a request for information and not a specific comment on the revisions to Chapter 122. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the

EPA to address any specific concerns regarding the revisions to Chapter 122 as a part of the program approval process.

CPS commented that applicants should be allowed more than five days, as proposed in §122.414, to post signs and notices after the submission of an acid rain application for a fast-track modification.

Section 122.414(a)(2)(E) requires that within five days of the submission to the executive director of an application for a fast-track modification, the designated representative shall comply with the public notice requirements in §122.320(b) - (m), concerning Public Notice, and §122.322, concerning Bilingual Public Notice. These sections require the posting of signs and the publication of newspaper notices. Section 122.414(a)(2)(E) mirrors revised 40 CFR §72.82(a). Also, as discussed in the preamble, the adopted amendments to §122.414 will make the Chapter 122 fast- track modification provisions consistent with 40 CFR Part 72 notice provisions. This is consistent with TCAA, §382.056(a), which requires public notice for federal operating permits to be consistent with the requirements of that section and with federal requirements. Therefore, the rule has not been changed in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §122.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513-382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054- 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Air pollutant - Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated;

(D) any pollutant that is subject to any standard promulgated under FCAA, §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the EPA by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However, a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).

(2) Applicable requirement -

(A) All of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site.

(B) All of the requirements of Chapter 112 of this title (relating to Sulfur Compounds) as they apply to the emission units at a site.

(C) All of the requirements of Chapter 113 of this title (relating to Control of Air Pollution from Toxic Materials), as they apply to the emission units at a site.

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site.

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site.

(F) All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide) as they apply to the emission units at a site.

(G) Any site specific requirement of the state implementation plan (SIP).

(H) Any term or condition of any preconstruction permits issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(I) All of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under FCAA, §111 (standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain Program;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (Tank Vessel Standards);

(viii) Any standard or other requirement under FCAA, §328 (air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (Stratospheric ozone Protection), unless EPA has determined that the requirement need not be contained in a permit; and

(x) any increment or visibility requirement under FCAA, Title I, part C or any NAAQS, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources).

(J) The following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and §111.139 of this title (relating to Exemptions).

(K) Any requirements noted in this definition which have been promulgated by the EPA, but have not been adopted by and delegated to the commission are federally enforceable only. These applicable requirements will be designated as federally enforceable only in the permit.

(3) Compliance assurance monitoring (CAM) case-by-case determination - A monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR Part 64 (Compliance Assurance Monitoring).

(4) Compliance assurance monitoring general operating permit (CAM GOP) - A GOP issued under Subchapter F of this chapter (relating to General Operating Permits) which provides monitoring options established by the executive director to satisfy Subchapter H of this chapter (relating to Compliance Assurance Monitoring).

(5) Continuous compliance determination method - For purposes of Subchapter H of this chapter and Subchapter G of this chapter (relating to Periodic Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(6) Control device - For the purposes of Subchapter H of this chapter, equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere.

(A) A control device does not include the following:

(i) passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics; or

(ii) inherent process equipment, which is equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that is installed and operated primarily for purposes other than compliance with applicable requirements. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment.

(B) If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular emission unit, then that definition shall apply for purposes of Subchapter H of this chapter.

(7) Deviation - Any indication of noncompliance with a term or condition of the permit as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit.

(8) Deviation limit - A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(9) Draft permit - The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review.

(10) Emission unit - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive

emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(11) Final action - Issuance or denial of the permit by the executive director.

(12) General operating permit (GOP) - A permit issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

(13) Major source -

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under FCAA, §112(b) (Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the EPA through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" shall have the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (NO_x Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_x in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide (CO) in any CO nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of CO in any CO nonattainment area classified as "serious";

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as "moderate";

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as "serious"; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(14) Notice and comment hearing - Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(15) Periodic monitoring case-by-case determination- A monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c) of this title (relating to Permit Content Requirements).

(16) Periodic monitoring GOP - A GOP issued under Subchapter F of this chapter which provides monitoring options established by the executive director to satisfy Subchapter G of this chapter.

(17) Permit or federal operating permit -

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any GOP, or group of GOPs, issued, renewed, or revised by the executive director under this chapter. The term "permit" refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context.

(18) Permit anniversary - The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

(19) Permit application - An application for an initial permit, permit revision, permit renewal, permit reopening, GOP, or any other similar application as may be required.

(20) Permit holder - A person who has been issued a permit or granted the authority by the executive director to operate under a GOP.

(21) Permit revision - Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of this chapter.

(22) Potential to emit - The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(23) Preconstruction authorization - Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title. In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under FCAA, §112(g) (Modifications) after delegation of §112(g) to the commission;

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit) after delegation of §112(j) to the commission; and

(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

(24) Predictive emission monitoring system (PEMS) - For purposes of Subchapter H of this chapter, a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(25) Proposed permit - The version of a permit that the executive director forwards to the EPA for a 45-day review period.

(26) Provisional terms and conditions - Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph; and

(iii) where applicable, the specific regulatory citations identifying any requirements that no longer apply.

(27) Renewal - The process by which a permit or an authorization to operate under a GOP is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(28) Reopening - The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(29) Site - The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). If a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated.

(30) State-only requirement - Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement.

(31) Stationary source - Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 CFR Part 89 (Control of Emissions from New and

In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

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 15, 2000.

TRD-200005707
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER B. PERMIT REQUIREMENTS
DIVISION 1. GENERAL REQUIREMENTS

30 TAC §122.110

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

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 15, 2000.

TRD-200005708
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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DIVISION 3. PERMIT APPLICATION

30 TAC §§122.130 - 122.132, 122. 134, 122.139, 122.140

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561- 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.134. Complete Application.

(a) An application is complete on the 61st day after receipt by the executive director, unless the executive director has requested additional information or otherwise notified the applicant of incompleteness.

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

(1) for initial permit issuance, all information required in §122.132 of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits);

(2) for permit renewal, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted;

(3) for the initial authorization to operate under a general operating permit, information necessary to determine qualification for, and to assure compliance with, the general operating permit;

(4) for the renewal of an authorization to operate under a general operating permit, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted; or

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded).

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this title deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

§122.140. Representations in Application.

The only representations in a permit application that become conditions under which a permit holder shall operate are the following:

(1) representations in an acid rain permit application;

(2) upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application;

(3) upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.714(a) and §122.612 of this title, excluding the justification for those requirements; and

(4) any representation in an application which is specified in the permit as being a condition under which the permit holder shall operate.

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 15, 2000.

TRD-200005709

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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DIVISION 4. PERMIT CONTENT

30 TAC §§122.142, 122.143

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this

title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased permit detail process, the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph.

(c) Each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements.

(d) For permits undergoing the phased permit detail process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Permit Detail).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

§122.143. General Terms and Conditions.

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director.

(9) If a federally enforceable only applicable requirement is adopted by the commission, the permit holder shall submit an application for an administrative permit revision for the removal of the federally enforceable only designation. The application shall be submitted no later than 12 months after the adoption of the requirement by the commission.

(10) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of

the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(11) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(12) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(13) The permit does not convey any property rights of any sort, or any exclusive privilege.

(14) A copy of the permit shall be maintained at the location specified in the permit.

(15) For general operating permits, a copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(16) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(17) Representations in acid rain applications and applicability determinations, and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate. Representations in general operating permit applications for CAM and periodic monitoring, as specified in §122.140(3) of this title, are conditions under which the permit holder shall operate.

(18) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(19) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

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 15, 2000.

TRD-200005710
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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DIVISION 5. MISCELLANEOUS

30 TAC §122.161

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.161. Miscellaneous.

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization.

(d) The requirements of Subchapter G or Subchapter H of this chapter (relating to Periodic Monitoring; and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring less stringent than the monitoring which is required by the TCAA, FCAA, or by an air pollution control agency having jurisdiction and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under the TCAA, FCAA, or by an air pollution control agency having jurisdiction.

(e) If after permit issuance or the granting of an authorization to operate under a general operating permit, a site no longer meets the

applicability criteria in §122.120 of this title (relating to Applicability), the executive director may administratively void the permit or the authorization to operate under a general operating permit.

(1) The permit holder shall demonstrate in writing that a site no longer meets the applicability criteria in §122.120 of this title and request that the permit or authorization to operate under a general operating permit be administratively voided by the executive director.

(2) If it is determined that the site meets the applicability criteria in §122.120 of this title after a permit or authorization to operate is administratively voided by the executive director, the owner or operator may be subject to enforcement action.

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 15, 2000.

TRD-200005711
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER C. INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS
DIVISION 2. PERMIT REVISIONS

30 TAC §§122.210, 122.213, 122.217

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.217. Procedures for Minor Permit Revisions.

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder submits to the executive director a notice containing the information required in §122.216(b) of this title (relating to Applications for Minor Permit Revisions) before the change is operated;

(3) the permit holder maintains the information required by §122.216(b) of this title with the permit until the permit is revised.

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement or, as appropriate, the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit, the following requirements apply.

(1) The permit holder shall comply with the following:

(A) Chapter 116 of this title;

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title.

(2) The permit holder shall record the information required in §122.216(b)(1) - (4) of this title before the compliance date of the new requirement or effective date of the repealed requirement. The information in §122.216(b)(1) - (5) of this title shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.

(3) The permit holder shall maintain the information required in §122.216(b)(1) - (4) of this title with the permit until the permit is revised.

(c) In every case, the applicable requirements are always enforceable.

(d) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(e) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary.

(f) A minor permit revision may be issued by the executive director provided the following:

(1) the changes meet the criteria for a minor permit revision;

(2) the executive director has received an application;

(3) the conditions of the permit provide for compliance with the requirements of this chapter; and

(4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.

(g) The executive director shall take final action on the permit revision application no later than 15 days after the end of the EPA review period, or no later than 15 days after the resolution of any EPA objection, whichever is later.

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 15, 2000.

TRD-200005712
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER D. PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION, EPA REVIEW, AND PUBLIC PETITION

30 TAC §§122.322, 122.350

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

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 15, 2000.

TRD-200005713
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER E. ACID RAIN PERMITS

30 TAC §§122.410, 122.412, 122.414

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to

require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

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 15, 2000.

TRD-200005715
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER F. GENERAL OPERATING PERMITS

DIVISION 1. PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

30 TAC §§122.501 - 122.506

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.501. General Operating Permits.

(a) The executive director may issue a general operating permit for numerous similar stationary sources provided the following:

(1) the conditions of the general operating permit provide for compliance with all requirements of this chapter;

(2) the requirements under §122.506 of this title (relating to Public Notice for General Operating Permits) have been satisfied;

(3) the requirements under §122.330 of this title (relating to Affected State Review) have been satisfied;

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied;

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied.

(b) General operating permits shall not be final until the requirements in §122.360 of this title (relating to Public Petition) have been satisfied.

(c) Each general operating permit shall identify the terms and conditions with which the permit holder shall comply.

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

(1) The executive director may issue an administrative permit revision to a general operating permit provided the following:

(A) the change meets the criteria for an administrative permit revision in §122.211 of this title (relating to Administrative Permit Revisions); and

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter.

(2) The executive director may issue a minor permit revision provided the following:

(A) the change meets the criteria for a minor permit revision in §122.215 of this title (relating to Minor Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.509, 122.330, and 122.350 of this title (relating to Public Announcement for General Operating Permits; Affected State Review; and EPA Review) have been satisfied.

(3) The executive director may issue a significant permit revision provided the following:

(A) the change meets the criteria for a significant permit revision in §122.219 of this title (relating to Significant Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.506, 122.330, 122.508, and 122.350 of this title (relating to Public Notice for General Operating Permits; Affected State Review; Notice and Comment Hearings for General Operating Permits; and EPA Review) have been satisfied.

(4) A significant permit revision shall not be final until the requirements in §122.360 of this title have been satisfied.

(5) The executive director may rescind a general operating permit if a notice of the proposed rescission is provided under §122.506 of this title (relating to Public Notice for General Operating Permits).

(e) The executive director shall make a copy of the draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.

(g) After issuance of a general operating permit, the executive director may combine the general operating permit with a previously issued general operating permit. Notice of this action will be published in the Texas Register and on the commission's publicly accessible electronic media.

§122.502. Authorization to Operate.

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate. Upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.140(3) becomes a condition under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) General operating permits shall not be authorized for affected units under the acid rain program.

(h) The executive director shall make a copy of the authorization to operate accessible to the EPA.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an application for a new authorization to operate to the executive director for the following activities at a site:

(1) a change in any applicability determination or the basis of any determination in the general operating permit application;

(2) a change in the CAM and periodic monitoring information specified in §122.140(3) of this title; or

(3) a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) The application for a general operating permit under this subsection shall contain at a minimum the following:

(1) a description of each change;

(2) a description of the emission unit affected;

(3) any changes in the applicability determinations;

(4) any changes in the bases of the applicability determinations;

(5) any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;

(6) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(7) a statement that the emission units qualify for the general operating permit; and

(8) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director except changes to deviation limits as noted in §122.608(e) and §122.708(d):

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the application before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general operating permit the application until the executive director grants a new authorization to operate; and

(4) the permit holder operates under the representations in the general operating permit application, as specified in §122.140 of this title.

(d) The permit holder need not comply with the representations in the application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the application no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

§122.504. Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations, the bases for the determinations, or the CAM and periodic monitoring information, as specified in §122.140(3) of this title, in the general operating permit application change due to the promulgation or adoption of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply.

(1) The permit holder shall submit an application for a new authorization to operate containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes in the applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;

(E) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(F) a statement that the emission units qualify for the general operating permit; and

(G) certification in accordance with §122.165 of this title (relating to certification by a Responsible Official).

(2) The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions).

(3) If the application is required as the result of the promulgation or adoption of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) record the information required in paragraph (1)(A) - (F) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an application for a new authorization to operate no later than 45 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) maintain the information required in paragraph (1)(A) - (F) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the application no later than 45 days after the issuance of the general operating permit; and

(B) maintain the application with the authorization to operate until the general operating permit is revised.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) the basis for each applicability determination remain unchanged.

(4) the CAM or periodic monitoring information specified in §122.140(3) of this title remains unchanged.

(c) If a general operating permit is rescinded and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of the revision of a general operating permit the permit holder no longer qualifies for the general operating permit, the permit holder must apply for another operating permit no later than the date of issuance of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the application or the terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.

(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance, significant permit revision, or rescission of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the draft general operating permit consistent with the requirements of this section. The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation in the area affected by the general operating permit. If the general operating permit has statewide applicability, the notice shall be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The notice shall contain the following information:

(1) a description of the activities involved in the draft general operating permit;

(2) the location and availability of copies of the draft general operating permit;

(3) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;

(4) the notification that a person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the general operating permit is entitled to request a notice and comment hearing; and

(5) the name, address, and phone number of the commission office to be contacted for further information.

(b) During the 30-day public notice comment period, any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request in writing a notice and comment hearing on a draft general operating permit.

(c) The executive director shall make a copy of the general operating permit and any required notices accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office.

(e) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft general operating permit.

(f) The draft general operating permit may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(g) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

(h) The executive director shall provide 30 days' advance notice of the hearing.

(i) If the executive director combines general operating permits as specified in §122.501(g) of this title, notice of this action will be published in the Texas Register and the commission's publicly accessible electronic media.

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 15, 2000.

TRD-200005716
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER G. PERIODIC MONITORING

30 TAC §§122.600, 122.602, 122.604, 122.606, 122.608, 122.610, 122.612

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.604. Periodic Monitoring Application Due Dates.

(a) Unless otherwise approved by the executive director, the permit holder shall submit an application for a periodic monitoring general operating permit (GOP) or a periodic monitoring case-by-case determination in accordance with the following schedule.

(1) For an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP.

(2) For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.

(b) An application for periodic monitoring requirements established under §122.600(b) of this title (relating to Implementation of Periodic Monitoring) shall be submitted upon request by the executive director.

§122.606. Applications for Periodic Monitoring.

(a) An owner or operator shall submit an application for periodic monitoring which must include at a minimum the following:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to periodic monitoring;

(3) proposed periodic monitoring requirements from the periodic monitoring general operating permit or developed by the permit holder, and any information required by the executive director to evaluate those requirements; and

(4) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(b) The proposed periodic monitoring requirements submitted in the application shall be designed to produce data that are representative of the emission unit's compliance with the applicable requirement.

§122.608. Procedures for Incorporating Periodic Monitoring Requirements.

(a) For permit holders applying for a periodic monitoring case-by-case determination, periodic monitoring requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following requirements apply:

(A) the permit holder shall submit an application for a permit other than a GOP including the information specified in §122.606 of this title (relating to Applications for Periodic Monitoring); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a periodic monitoring GOP, periodic monitoring requirements shall be initially incorporated into a permit or GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following requirements apply:

(A) the permit holder shall submit an application including the information in §122.606 of this title;

(B) the representations in the GOP application as specified in §122.140(3) of this title (relating to Representations in Application) shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) Except as in subsection (d) of this section, periodic monitoring requirements implemented under §122.600(b) of this title (relating to Implementation of Periodic Monitoring) shall be initially incorporated into a permit or GOP application through the procedures in §122.201 of this title (relating to Initial Permit Issuance), the procedures in Subchapter F of this chapter (relating to General Operating Permits), or the following procedures for minor permit revision:

(1) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(2) the requirements of §122.217(f) and (g) of this title shall be satisfied.

(d) If the periodic monitoring requirements are incorporated at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures), or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) apply.

(e) After CAM requirements are incorporated into a permit or a new authorization to operate under a CAM GOP is granted, subsequent revisions to periodic monitoring requirements shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter, as appropriate. However, changes in deviation limits, other than changes required as the result of the promulgation or adoption of applicable requirement, shall not be operated before the permit or authorization to operate under a general operating permit is revised.

§122.610. Periodic Monitoring General Operating Permits Content.

(a) Except as in subsection (b) of this section, each periodic monitoring general operating permit (GOP) shall include periodic monitoring requirements designed to produce data that are representative of compliance with the applicable requirement.

(b) The periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard.

§122.612. Periodic Monitoring Requirements in Permits and General Operating Permit Applications.

(a) The permit or general operating permit application upon granting of the authorization to operate shall include, at a minimum, the following periodic monitoring requirements:

(1) the identification of the emission unit;

(2) the emission limitation or standard subject to periodic monitoring;

(3) periodic monitoring requirements that are designed to produce data that are representative of the emission unit's compliance with the applicable requirement; and

(4) special terms and conditions, as appropriate.

(b) Unless otherwise approved by the executive director, the permit holder shall begin conducting the monitoring required under this subchapter upon issuance, revision, or renewal of the permit or the granting of the authorization to operate for these 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 15, 2000.

TRD-200005717
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Effective date: September 4, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER H. COMPLIANCE ASSURANCE MONITORING

30 TAC §§122.700, 122.702, 122.704, 122.706, 122.708, 122.710, 122.712, 122.714, 122.716

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for

appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

§122.700. Implementation of Compliance Assurance Monitoring.

(a) The requirements of 40 Code of Federal Regulations (40 CFR) Part 64 (Compliance Assurance Monitoring) shall be implemented through one of the following mechanisms:

(1) a compliance assurance monitoring general operating permit (CAM GOP), which provides monitoring options established by the executive director, in accordance with the requirements of this subchapter; or

(2) a CAM case-by-case determination, in which the permit holder designs a monitoring approach for approval by the executive director, in accordance with the requirements of this subchapter.

(b) References in 40 CFR 64 to 40 CFR 70 (Operating Permit Program) shall be satisfied by the requirements of this chapter for the purpose of implementing 40 CFR 64.

§122.702. Compliance Assurance Monitoring Applicability.

(a) In this subchapter, each emission unit shall be considered separately with respect to each air pollutant and the term control device, as used in this subchapter, shall have the meaning defined in §122.10(6) of this title.

(b) Except for emission units that are exempt under subsection (d) of this section, the requirements of this subchapter apply to an emission unit at a major source subject to this chapter provided the following:

(1) the emission unit is subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in subsection (c) of this section;

(2) the emission unit uses a control device to achieve compliance with the emission limitation or standard in paragraph (1) of this subsection; and

(3) the emission unit has the pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source, as defined in this chapter.

(c) The requirements of this subchapter shall not apply to any of the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title VI (Stratospheric Ozone Protection);

(3) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(4) emission limitations or standards that apply solely under an emissions trading program approved or promulgated by the EPA under the FCAA that allows for trading emissions;

(5) emissions caps that meet the requirements specified in 40 Code of Federal Regulations (40 CFR) §70.4(b)(12) (State Program Submittals and Transition);

(6) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test);

(7) other emission limitations or standards specified as exempt by the EPA; or

(8) emission limitations or standards regulating fugitive emissions.

(d) The requirements of this subchapter shall not apply to a utility unit, as defined in 40 CFR §72.2 (Definitions), that is municipally-owned if the permit holder documents in a permit application the following:

(1) the utility unit is exempt from all monitoring requirements in 40 CFR 75 (Continuous Emission Monitoring) (including the appendices);

(2) the utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations, as demonstrated by historical operating data and relevant contractual obligation, and will be operated consistent with that purpose throughout the permit term; and

(3) the actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or the total time the unit has been in operation for a unit in operation less than three years), are less than 50% of the amount in tons per year required for a site to be classified as a major source and are expected to remain so.

§122.706. Applications for Compliance Assurance Monitoring.

(a) or permit holders applying for a CAM GOP, the following requirements apply:

(1) The application shall include at a minimum the following:

(A) the identification of the emission unit;

(B) the emission limitation or standard subject to CAM;

(C) an appropriate monitoring option provided in a CAM GOP;

(D) if not defined by the monitoring option selected, a deviation limit;

(E) a justification for any deviation limit proposed under paragraph (4) of this subsection in accordance with subsection (c) of this section; and

(F) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(2) The proposed CAM requirements submitted in the application shall be designed to provide reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(3) Unless otherwise specified in the CAM GOP, the permit holder shall provide justification for any deviation limit according to one of the following.

(A) The permit holder shall submit the following performance test data:

(i) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;

(ii) if the applicable rule does not specify testing conditions or only partially specifies testing conditions, control

device operating parameter data from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and

(iii) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(B) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(4) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the CAM GOP that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(b) For permit holders applying for a CAM case-by-case determination, the application shall be submitted in accordance with 40 CFR §64.3 (Monitoring Design Criteria) and 40 CFR §64.4 (Submittal Requirements).

§122.708. Procedures for Incorporating Compliance Assurance Monitoring Requirements.

(a) For permit holders applying for a compliance assurance monitoring (CAM) case-by-case determination, CAM requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following apply:

(A) the permit holder shall submit an application for a permit other than a general operating permit including the information specified in 40 Code of Federal Regulations (40 CFR) §64.3 (Monitoring Design Criteria) and §64.4 (Submittal Requirements); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized to operate under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including information specified in 40 CFR §64.3 and §64.4 and a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official); and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a CAM GOP, CAM requirements shall be initially incorporated into a permit or GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following apply:

(A) the permit holder shall submit an application including the information in §122.706 of this title (relating to Applications for CAM General Operating Permits);

(B) the representations in the GOP application as specified in §122.140(3) of this title (relating to Representations in Application) shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate, provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.706 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) If CAM requirements are initially incorporated into the permit or GOP application at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures) or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) shall apply, respectively.

(d) After CAM requirements are incorporated into a permit or a new authorization to operate under a CAM GOP is granted, subsequent revisions to those CAM requirements shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter (relating to General Operating Permits), as appropriate. However, changes in deviation limits, other than changes required as the result of a promulgation or adoption of an applicable requirement shall not be operated before the permit or authorization to operate under a GOP is revised.

§122.712. General Terms and Conditions for Compliance Assurance Monitoring.

(a) Unless otherwise specified in the compliance assurance monitoring general operating permit (CAM GOP), the following general terms and conditions shall become terms and conditions of each CAM GOP.

(1) The permit holder shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to monitor accurately.

(2) At all times, the permit holder shall properly maintain the monitoring system, including, but not limited to, maintaining parts if necessary, for routine repairs of the monitoring system.

(3) The permit holder shall collect data at all required intervals during emission unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities.

(A) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of this subchapter.

(B) The permit holder shall maintain records of the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).

(C) The permit holder shall use all the data collected during all periods other than those identified in subparagraph (A) of this paragraph in assessing the operation of the control device and associated control system.

(D) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.

(4) All incidents of monitoring downtime recorded under paragraph (3)(B) of this subsection shall be reported in accordance with §122.145 of this title (relating to Reporting Terms and Conditions).

(5) The permit holder shall respond to deviations in the following manner.

(A) The permit holder shall restore operation to its normal manner as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(B) The permit holder shall minimize the period of any startup, shutdown, or malfunction and take any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of a deviation (other than those caused by excused startup or shutdown conditions).

(6) If the permit holder identifies a failure to achieve compliance with an emission limitation or standard, for which the approved monitoring did not indicate a deviation while providing valid data, or the results of compliance or performance testing document a need to modify the existing CAM requirements, the permit holder shall notify the executive director within 30 days. If necessary, the permit holder shall apply for a revision to the CAM requirements, or a new permit, if appropriate, consistent with the procedures of Subchapter C or F of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals; and General Operating Permits).

(7) CAM requirements established under this subchapter are subject to §§122.144 - 122.146 of this title (relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(8) The permit holder shall comply with the requirements of a quality improvement plan according to §122.716 of this title (relating to Quality Improvement Plans), if required by the executive director.

(b) If CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions apply.

§122.714. Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications.

(a) For permit holders using the CAM GOP implementation mechanism, the following apply:

(1) The compliance assurance monitoring (CAM) requirements shall be incorporated into the permit or general operating permit (GOP) application upon granting of the authorization to operate and shall include, at a minimum, the following:

(A) the identification of the emission unit;

(B) the emission limitation or standard subject to CAM;

(C) an appropriate monitoring option provided in a CAM GOP;

(D) if not defined by the monitoring option selected, a deviation limit that provides a reasonable assurance of compliance;

(E) unless otherwise approved by the executive director, the requirements of §122.712 of this title (relating to General Terms and Conditions for CAM General Operating Permits); and

(F) unless otherwise approved by the executive director, the special terms and conditions contained in the CAM GOP.

(2) Unless otherwise approved by the executive director, the permit holder shall conduct the monitoring required under this subchapter upon revision or renewal of the permit or the granting of the authorization to operate under the CAM GOP.

(3) The CAM requirements incorporated into the permit or GOP application upon granting of the authorization to operate shall provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(4) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit or GOP application upon granting of the authorization to operate shall require the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(b) For permit holders using the CAM case-by-case determination implementation mechanism, 40 Code of Federal Regulations (40 CFR) §64.6 (Approval of Monitoring) and 40 CFR §64.7 (Operation of Approved Monitoring) apply.

§122.716. Compliance Assurance Monitoring Quality Improvement Plans.

(a) Based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices, the executive director may require implementation of a quality improvement plan (QIP).

(b) A QIP shall include, as appropriate, steps to evaluate and correct control performance, process operation changes, preventative maintenance practices, and more frequent or improved monitoring.

(c) The permit holder shall maintain the written QIP with the permit or authorization to operate under the CAM GOP.

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 15, 2000.

TRD-200005718
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Effective date: September 4, 2000
Proposal publication date: March 10, 2000
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CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §§290.271 - 290.275

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §290.271, Purpose and Applicability; §290.272, Content of the Report; §290.273, Required Additional Health Information; §290.274, Report

Delivery and Recordkeeping; and §290.275, Appendices A - D. The commission adopts these revisions to Chapter 290, Public Drinking Water, in order to implement a federal rule requiring community water systems to prepare and provide to their customers annual consumer confidence reports on the quality of the water delivered by the systems. These new sections are adopted by federal mandate of the 1996 amendments to the Safe Drinking Water Act which requires states, such as Texas, with primary enforcement responsibility of their safe drinking water program to adopt the federal consumer confidence report requirements by August 21, 2000. Sections 290.272, 290.273, 290.274, and 290.275 are adopted *with changes* to the text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4468). Section 290.271 is adopted *without changes* and the text will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

As part of the 1996 amendments to the Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (EPA) was required to develop rules requiring community water systems to develop reports on the quality of the water they provide to their customers. These reports provide valuable water quality information to customers of community water systems and allow the customers to make health-based decisions regarding their drinking water consumption.

Consumer confidence reports are the centerpiece of public right-to-know provisions under the SDWA. The information contained in the reports is intended to raise consumer awareness of where their drinking water comes from, help them understand the process by which safe drinking water is delivered to their homes, and educate them on the importance of preventative measures, such as source water protection, that help to ensure a safe drinking water supply. Additionally, the reports provide information for consumers with special health needs and provide information and resources for accessing source water assessments and health effects data.

The federal rule was finalized on August 19, 1998. Community water systems were required to prepare and distribute the first report by October 19, 1999; the second report by July 1, 2000; and subsequent annual reports by July 1, thereafter. Most community water systems developed and distributed reports during 1999.

The federal rule requires states that have safe drinking water primary enforcement responsibilities to adopt the federal consumer confidence report provisions by August 21, 2000. States may adopt by rule, alternative requirements for the form and content of the report. The alternative requirements must provide the same type and amount of information as required by the federal rule and must be designed to achieve an equivalent level of public information and education as would be achieved under the federal rule. These alternative requirements must be submitted to the EPA for approval.

Program staff conducted a series of workgroup meetings with representatives of community water systems and interested parties to receive comment and suggestions on the development of the state rules and on the content of a report that would best inform consumers. Program staff also provided assistance during the systems' development of the first report that was distributed by October 19, 1999, and has used information gathered from this assistance in the development of this proposal.

SECTION BY SECTION DISCUSSION

Section 290.271, relating to Purpose and Applicability, explains that the rules establish the minimum requirements for the content of annual reports community water systems must deliver to their customers.

Section 290.272, relating to Contents of the Reports, describes the information that must be included in the reports. The reports must include information on the source of the drinking water, including any information on source water assessments that have been conducted. The reports must provide explanations for definitions and references of technical and scientific terms used. At a minimum, the terms that need to be defined in the reports are maximum contaminant level goal (MCLG), maximum contaminant level (MCL), variances, exemptions, treatment techniques, action level (AL), parts per million (ppm), parts per billion (ppb), parts per trillion (ppt), parts per quadrillion (ppq), nepholometric turbidity units (NTU), million fibers per liter (mfl), millirems per year (mrem/year), and picocuries per liter (pCi/l).

The commission adopts §290.272(b)(2)(G) and (H) with clarifications to the units of measure, nanograms per liter "(ng/l)" and picograms per liter "(pg/l)". The abbreviations are part of the adopted rules.

Adopted new subsection (c) requires the inclusion of information on detected regulated and unregulated contaminants and disinfection by-products subject to mandatory monitoring by 30 TAC Chapter 290, Subchapter F state regulations. The adopted rules do not require reporting of secondary constituent levels listed in §290.113. This subsection provides instructions that the systems must use in preparing the required tables for the report. The provision sets out guidance on how to report the contaminants listed in §290.275. Appendix A, relating to Converting MCL Compliance Values for Consumer Confidence Reports, provides factors for converting scientific MCL values into units, such as ppm and ppb, that may be used in the consumer confidence report. Appendix B, relating to Regulated Contaminants, provides information on the likely sources of detected contaminants. Appendix C, relating to Health Effects Language, provides information on potential health effects of detected contaminants that must be included in the consumer confidence report. The commission adopts these rules with a change from the proposal to correct a typographical error in §290.272(c)(4)(D)(iii) to make the word "detection" plural.

Adopted new subsection (d), information on *Cryptosporidium*, radon, and other constituents, explains that if the system has performed monitoring for *Cryptosporidium* and the monitoring detects the presence of *Cryptosporidium*, the report must include a summary of any detects and explain the significance of the results. If any monitoring for radon has occurred and it indicates the presence of radon in the finished water, the report must include the monitoring results and explain the significance of the results. If monitoring indicates the presence of other contaminants in finished water, systems are encouraged to report any results which may indicate a health concern. The provision provides guidance on how systems can make this determination. This provision is adopted with a change from the proposal to §290.272(d)(1) to clarify that results of "detections" rather than results of the "monitoring" are what trigger reporting.

Adopted new subsection (e), compliance with National Primary Drinking Water Regulations (NPDWR), explains that any violation of the NPDWR requirements occurring over the year covered by the report must be noted in the report. NPDWR requirements include: monitoring and reporting of compliance data; filtration

and disinfection equipment and processes; lead and copper controls; treatment techniques for Acrylamide and Epichlorohydrin; i.e., recordkeeping of compliance data; special monitoring requirements such as those prescribed by the NPDWR; and violation of the terms of a variance, exemption, administrative order, or judicial order. This provision is adopted with a change from the proposal to correct a cross-reference in §290.272(e) from (b)(6) to (c)(4)(I)(ii).

Adopted new subsection (f) requires the systems operating under the terms of a variance or exemption to explain the terms and status of the variance or exemption.

Adopted new subsection (g) details the following information that must be included in the report: a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water; phone number of the owner/operator; a statement in Spanish explaining where to call for more information in Spanish and other languages as necessary; information on opportunities for public participation, such as the system's board meetings; and information on interconnected emergency sources of water used during the calendar year. In addition, the report may include additional information that is consistent with, but does not detract from, the report's intended purpose.

Adopted new §290.273, relating to Required Additional Health Information, provides required language that must appear in the report. Subsection (a) includes language on the vulnerability of the general population and certain populations to certain microbial contaminants. Subsection (b) explains that systems which detect arsenic levels above 25 micrograms per liter, but below the MCL, shall include the provided statement about arsenic. Subsection (c) explains that a system that detects nitrate levels above five mg/l but below the MCL, must include the provided statement about the impacts of nitrate on children. Subsection (d) provides a statement on the impacts of lead on children that shall be included by systems where the action level is greater than 5.0% of the homes sampled when 20 or more samples are gathered. Subsection (e) provides that any water system subject to this section may seek approval from the executive director to write its own alternative information statements. Subsection (f) provides that systems that detect total trihalomethanes above 0.080 mg/l as an annual average must include the health effects language referenced in §290.275(3). This provision is adopted with a change from the proposal to remove an incorrect reference to 40 CFR 141.154(e).

Section 290.274, relating to Report Delivery and Recordkeeping, explains that the reports must be delivered to customers by July 1 of each year. The system shall use adequate and appropriate means for delivering the report to its customers. Systems shall certify that the report has been distributed and provide a copy to the executive director by August 1 of each year. The report shall be made available upon request, and those systems serving 100,000 people or more shall post the report to a publicly accessible site on the Internet. Finally, any system that provides water to another community water system shall deliver the information contained in §290.272 to the community water system by April 1 or a date agreed upon by both systems.

Section 290.275 contains the appendices relevant to this subchapter. These tables appear in the Tables and Graphics section of this issue of the *Texas Register*.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted 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 rules implement federal requirements related to community water systems' responsibility to develop and distribute an annual report on the quality of the water they provide to their customers. These reports, called consumer confidence reports, are required of all community water systems, whether these systems are publicly or privately owned. The adopted rules establish the minimum requirements for content in the report and for the distribution of and recordkeeping associated with the report. While the adopted rules are not intended to protect the environment, they may help in reducing human health risks by providing customers with information about their drinking water. The adopted rules will not adversely affect in a material way, the economy of the state, any sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state. Therefore, the adopted rules do not meet the definition of a "major environmental rule."

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement SDWA provisions requiring community water systems to develop annual reports on the quality of the water they provide to their customers. These annual reports are known as consumer confidence reports. The federal regulations require states with safe drinking water primary enforcement responsibilities to adopt the federal consumer confidence report provisions by August 21, 2000. The adopted rules provide the requirements for the information that at a minimum shall be contained in the reports. This information shall include the source of the drinking water provided by the system, information on any source of water assessments conducted, explanations of the technical terms and references used, and information on regulated and unregulated contaminants. The report shall also include any results from monitoring that is done to determine the presence of *Cryptosporidium*. The adopted rules also provide language to be used in the report regarding health information, such as vulnerability by general and certain populations to contaminants. Finally, the rules provide that the reports will be delivered to customers by July 1 of each year and copies will be maintained for a designated period.

The adopted rulemaking does not impose a burden on private property as the subject of the rules is related to reporting information on the quality of water provided by community water systems. The adopted rulemaking implements SDWA requirements that states with safe drinking water primary enforcement responsibilities must adopt. The adopted rulemaking action is intended to fulfill an obligation mandated by federal law.

Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the CMP.

HEARINGS AND COMMENTERS

A public hearing was conducted on June 12, 2000 with one individual from the regulated community attending and providing comments. Additionally, four entities provided written comments during the public comment period. All comments were generally in favor of the rule and were concerned with specific wording clarifications. To address these comments, the staff examined the rule language and either deleted or modified the rule language as follows:

Commenter 1.

ECO Resources, Inc., attended the public hearing and commented that §290.272(g)(6) was unclear as to whether a water supplier must report on the quality of water that is potentially available from an interconnection with another water system, even if the water is not actually used or only minimally used during the reporting period.

The commission agrees that the mere existence of an interconnection between two water systems does not trigger a reporting of the water quality items listed in §290.272(c)(4). The commission has clarified the rule language in §290.272(g)(6) by adding "to augment the drinking water supply" after the term "emergency source." The commission deems that compliance with this paragraph, regardless of the amount of water used, is not burdensome because §290.272(g)(6) does not require the reporting of water quality data as described in §290.272(c)(4).

ECO Resources also felt that language should be added to the rule which would require a water system that supplies water to another water system, as described in §290.274(g), to certify to the commission that all applicable information had been supplied to the customer system.

The commission agrees with this assertion and has modified §290.274(g) to include language requiring a water provider to certify to the executive director that the necessary information has been provided to the customer water system. The certification must be delivered to the executive director by May 1 of each year.

Commenter 2.

Written comments from San Antonio Water System provided general support for the rulemaking, but made no specific request for changes to the rule language.

The commission expresses thanks and appreciation that the commenter took time to provide the statement.

Commenter 3.

Written comments from Vinson and Elkins expressed similar concerns as in ECO Resources' first comment relative to §290.272(g)(6). The commenter sought clarification as to whether or not a water supplier must report on the quality of water that is potentially available from an interconnection with another water system if the water is not actually used.

The commission agrees, and makes the same response as made to ECO Resources' comment.

Vinson and Elkins expressed concern that no clear definition of "customer" versus "consumer" exists in §290.274(a) or (b).

The commission agrees that further clarification is necessary and has added the words "bill- paying" prior to the word "customer" in §290.274(a). The commission further responds that §290.274(b) adequately distinguishes between these terms and no wording change is deemed necessary. Further, §290.274(e) states that anyone, customer or otherwise, may request a report but the water system is not obligated to provide a report during its distribution process to a non-customer or a non-consumer unless such report is requested.

Vinson and Elkins requested that the commission provide a list of factors for determining what constitutes a "large proportion" of non-English or non-Spanish speaking residents as part of §290.272(g)(3). Such a statement would allow the water system to know exactly when foreign language notice statements must be included in the report.

The commission does not agree and deems that no additional clarification is necessary nor can a clearer definition of the term "large proportion" be made in the proposed rule without becoming over-prescriptive. The rules require that a Spanish language statement be included in each English language report and other foreign language statements may be included at the discretion of the water system. If complaints are received from residents of a water system, then the commission will investigate the level of non-English and non-Spanish speaking residents using United States Census Bureau or other available data to determine if additional language statements must be added to the report.

Vinson and Elkins wished to know if the placement of additional foreign language statements must also occur on page one of the report.

The commission regards the placement of all foreign language statements on the first page of the report as important and deems that the water system should make every effort to comply with this requirement. If extenuating circumstances make compliance impossible, the water system should include a justification statement as part of the certification document referred to in §290.274(c).

Vinson and Elkins requested that the commission expand the language of §290.272(a)(3) to more closely follow the federal language and allow the option of using statements written by a water system official as part of the summary of susceptibility to potential sources of contamination following the receipt of a source water assessment.

The commission agrees with this comment and has modified this paragraph accordingly.

Vinson and Elkins pointed out that in §290.272(b)(2)(E), the measurement for the term "ppb" should be "æg/l" and not "g/l."

The commission agrees with this comment and points out that the rule language is correctly written, but a printing error caused the confusion and therefore no modification of the rule language is necessary.

Vinson and Elkins wished to see a definition for the words "variance" and "exemption" as part of §290.272(b)(3).

The commission disagrees that further definition is needed and also points out that definitions for these terms are located in §290.103(4)(A) and (B). A cross-reference to §290.103(4)(A) and (B) has been placed in §290.272(b)(3).

Commenter 4.

Written comments from City of Fort Worth (Fort Worth), state that the word "Español" in §290.272(g)(3) should be written "español".

The commission agrees with this comment and has modified this subsection accordingly.

Fort Worth stated that it is not always possible to comply with the requirement to place a foreign language statement on page one of the document as required in §290.272(g)(3) because it is sometimes not easy to identify page one due to document folding requirements and the placement of address labels.

The commission agrees that the identification of what constitutes the first page of the document is sometimes not clear; however, the water system must ensure that the statement is on whichever page the water system deems to be the first page of the document. Therefore, no change to the rule language is necessary.

Fort Worth commented about the placement of the vulnerability language required by §290.273(a), and requested that the location of the statement be left up to the water system.

The commission does not agree that the placement of the vulnerability statement for the elderly, infants, cancer patients, and people with human immunodeficiency virus (HIV) should be at the discretion of the water system. People who are in these groups should immediately be able to see the caution statement. Additionally, the location of the vulnerability statement is mandated by federal rule. Therefore, no change to the rule language is necessary.

Fort Worth commented that the proposed rules should include a requirement for a specific type size so that readability will be insured.

The commission agrees that overall document readability can be greatly affected by the type size and font used for the report, but it does not wish to be over-prescriptive with regard to this issue and deems that the numerous references within the proposed rules are sufficient to convey the concept that this report must be easily readable. Further, if the commission receives complaints regarding readability, it will make recommendations to the water systems that closer attention must be paid to this issue. Therefore, no change to the rule language is necessary.

Commenter 5.

Written comments from City of Austin (Austin), stated that confusion exists between §290.272(d)(3) where it is recommended that results of additional monitoring be reported and §290.273(b), which requires the addition of mandatory language if arsenic is detected at levels greater than 25 micrograms per liter. Austin asserted that §290.273(b) can be eliminated.

The commission points out that the language in §290.272(d)(3) is a recommendation, while the language in §290.273(b) is a requirement. The commission does not agree that §290.273(b) can be eliminated because it is a federal requirement; therefore, no wording change is necessary.

Austin further asserted that to include a Spanish language statement, as required by §290.272(g)(3), in a Spanish language version of the report would be ludicrous.

The commission agrees with this comment and has modified this paragraph accordingly.

Austin pointed out that the MCL statements for total coliform bacteria included in §290.275, Appendix A and B are incorrect.

The commission agrees with this comment and has modified the section accordingly.

Austin pointed out that the MCLG listings for total trihalomethanes (TTHMs) in §290.275, Appendix A and B should be listed as n/a rather than "0" because this value does not presently exist in federal or state rule.

The commission agrees with this comment and has modified the section accordingly.

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which provides the commission with authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code, §341.031, which allows the commission to adopt rules to implement the SDWA, 42 United States Code, §§300 et seq.; and Health and Safety Code, §341.0315, which requires public water supply systems to meet the requirements of commission rules.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official.

(b) The following explanations must be included in the annual report.

(1) Each report shall contain definitions of:

(A) Maximum contaminant level goal (MCLG) - the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety; and

(B) Maximum contaminant level (MCL) - the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology.

(2) The following terms and their descriptions shall be included when they appear in the report:

(A) MFL - million fibers per liter (a measure of asbestos);

(B) mrem/year - millirems per year (a measure of radiation absorbed by the body);

(C) NTU - nephelometric turbidity units (a measure of turbidity);

(D) pCi/l - picocuries per liter (a measure of radioactivity);

(E) ppb - parts per billion, or micrograms per liter (g/l);

(F) ppm - parts per million, or milligrams per liter (mg/l);

(G) ppt - parts per trillion, or nanograms per liter (ng/l); and

(H) ppq - parts per quadrillion, or picograms per liter (pg/l).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act shall include a description of the variance or the exemption granted under §290.102(b)(4) of this title (relating to Variance and Exemptions).

(4) A report that contains data on a contaminant for which the EPA has set a treatment technique or an action level must include, depending on the contents of the report, the definitions for:

(A) Treatment technique (TT) - a required process intended to reduce the level of a contaminant in drinking water; and

(B) Action level (AL) - the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium*. Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, action level, or treatment technique;

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, relating to Unregulated Contaminants and found in §290.275(4) of this title (relating to Appendices A - D); and

(C) disinfection by-products or microbial contaminants for which monitoring is required by 40 CFR §141.142, relating to Information Collection Requirements (ICR) for Public Water System - Disinfection by-product and related monitoring, and 40 CFR §141.143, relating to Microbial Monitoring Requirements.

(2) The data relating to these detected contaminants shall be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its reports must be displayed separately.

(3) The data shall be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years. Furthermore, results of monitoring in compliance with the 40 CFR §141.142, relating to ICR Disinfection by- product and related monitoring, and 40 CFR §141.143, relating to ICR Microbial Monitoring Requirements, need only be included for five years from the date of the last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) shall contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the treatment technique or specific action level applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with National Primary Drinking Water Regulations and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) If sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) If compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(iv) If the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done prior to multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Turbidity), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs or treatment techniques. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium)*, the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium*, radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium*, the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the *National Primary Drinking Water Regulations* (NPDWR) or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1)-(7) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems which have failed to install adequate filtration, disinfection equipment or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease- causing organisms. These organisms include bacteria, viruses and parasites which can cause symptoms such as nausea, cramps, diarrhea and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems which fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275 of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of treatment techniques for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report shall include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title (relating to General Applicability), the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater

runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are by- products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally-occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration (FDA) regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistancia en espa¤ol, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of non-English and non-Spanish speaking residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

§290.273. Required Additional Health Information.

(a) All reports must prominently display the following language on the first page of the consumer confidence report or in bold print on the second page of the report: *"You may be more vulnerable than the general population to certain microbial contaminants, such as Cryptosporidium, in drinking water. Infants, some elderly, or Immuno-compromised persons such as those undergoing chemotherapy for cancer; those who have undergone organ transplants; those who are undergoing treatment with steroids; and people with HIV/AIDS or other immune system disorders can be particularly at risk from infections. You should seek advice about drinking water from your physician or health care provider. Additional guidelines on appropriate means to lessen the risk of infection by Cryptosporidium are available from the Safe Drinking Water Hotline (800-426-4791)."*

(b) A system which detects arsenic levels above 25 micrograms per liter but below the maximum contaminant level (MCL) shall include in its report a short informational statement about arsenic using the following language: *"EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations."*

(c) A system which detects nitrate at levels above five milligrams per liter (mg/l), but below the MCL shall include a short informational statement about the impacts of nitrate on children using the following language: *"Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask advice from your health care provider."*

(d) Systems collecting 20 or more samples which detect lead above the action level in greater than 5.0% of homes sampled shall include a short informational statement about the special impact of lead on children using the following language: *"Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at the homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline at (800) 426-4791."*

(e) Any water system subject to any or all of subsections (b)-(d) of this section may seek approval from the executive director to write its own alternative educational informational statement.

(f) Public water systems that detect total trihalomethanes above 0.080 mg/l as an annual average must include health effects language provided in §290.275(3) of this title (relating to Appendices A-D), Appendix C, paragraph (73).

§290.274. Report Delivery and Recordkeeping.

(a) Each community water system must mail or otherwise directly deliver one copy of the report to each bill paying customer by July 1 of each year. Each report must contain data collected during the previous calendar year. For tests not performed each year, data used shall not be older than five years. Each new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter. In addition, each community water system must provide a copy of the report to each new customer upon request.

(b) In addition to delivering a report to each customer, the system must make a good-faith effort to reach consumers who do not get water bills, using means recommended by the executive director. An adequate good-faith effort should be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters

or workers. A good-faith effort to reach such consumers should include a mix of methods appropriate to the particular system such as: posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunchrooms of public buildings; delivery of multiple copies for distribution for single-billed customers such as apartment buildings or large private employers; and delivery to community organizations.

(c) Each community water system shall certify to the executive director that the report has been distributed and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the executive director. This certification and a copy of the report must be mailed to the executive director by August 1 of each year.

(d) Each community water system shall deliver the report to any other agency or clearinghouse identified by the executive director no later than the date the system is required to distribute the report to its customers.

(e) Each community water system shall make its report available to the public upon request.

(f) Each community water system serving 100,000 or more people shall post its current year's report to a publicly accessible site on the Internet.

(g) Any system providing water to a community water system shall deliver the applicable information required by §290.272 of this title (relating to the Content of the Report) to the receiving systems by April 1 and must certify to the executive director that the required information has been delivered. This certification must be delivered to the executive director by May 1 of each year.

(h) Any system subject to this subchapter must retain copies of its consumer confidence reports for no less than five years.

§290.275. Appendices A - D.

The following appendices are integral components of the subchapter:

(1) Appendix A--Converting MCL Compliance Values for Consumer Confidence Reports;
Figure: 30 TAC §290.275(1)

(2) Appendix B--Sources of Regulated Contaminants;
Figure: 30 TAC §290.275(2)

(3) Appendix C--Health Effects Language;
Figure: 30 TAC §290.275 (3)

(4) Appendix D--Unregulated Contaminants.
Figure: 30 TAC §290.275(4)

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 14, 2000.

TRD-200005705
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: August 21, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 239-5017

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) adopts amendments to 31 TAC §§371.2, 371.19-371.22, 371.24, 371.25, and new 371.90, concerning the Drinking Water State Revolving Fund (DWSRF) without change to the proposed text as published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6470) and will not be republished. The amendments and new section are adopted to update the rules, correct sequence, style, and definition of terms, clarify administrative procedures, and to add a new element to the DWSRF rating system.

Section 371.2, relating to Definitions of Terms, is amended to expand the definition of "consolidation" to include an applicant which owns two or more water systems that are not physically interconnected. Previously an entity which owned and operated separate systems was excluded from receiving a higher rating score for consolidation because the systems were not physically interconnected. Since efficiencies in management should be rewarded, and since single management of multiple system can result in efficiencies in management, those entities owning and managing multiple water systems, even if the systems are not physically interconnected, can now receive an enhanced score for consolidation.

Section 371.19, relating to Rating Process, is amended to define "projected violations" and to allow for the calculation of a rating score for "projected violations." Water systems that are noncompliant with drinking water regulations receive higher rating scores because they pose greater public health risks. Similarly, water systems which are acting voluntarily to prevent noncompliance and the associated public health risk, should also be entitled to receive higher rating scores prior to an actual finding of noncompliance. The granting of a higher rating score will increase the threatened water system's opportunity to receive funding for constructing improvements before being found in noncompliance. Subsequent paragraphs were renumbered to accommodate the new paragraph and graphic Figure 31 TAC §371.19(a)(11) was renumbered to §371.19(a)(12) as a result.

Section 371.19 is amended to create a process for calculation of a rating score for those water systems which will now qualify for higher points under the proposed expanded definition of "consolidation." The section is further amended to correct the abbreviation for the Texas Natural Resource Conservation Commission from "TNRCC" to "commission," which is defined, and to re-order the alphabetical listing of definitions that are included within the section. Section 371.19(l) is amended to add a title for the subsection that is consistent with other subsections of the section.

Section 371.20, relating to Intended Use Plan, is amended to describe acceptable changes that may be made to a project after it has been listed on an adopted Intended Use Plan. These changes include the applicant, itself; the number of participants in a consolidated project; and the solution to an identified water supply problem. The amendments allow the board to focus

on providing funding for solutions to the water supply needs of a particular area, rather than focusing on a particular applicant or project.

Section 371.21, relating to Criteria and Methods for Distribution of Funds for Water System Improvements, is amended to extend a commitment deadline in limited circumstances where an applicant has timely submitted an application, as defined in the chapter rules, but additional information is deemed to be necessary. The change will allow the Executive Administrator to request additional information from an applicant without causing the applicant to lose its place on the funding list. The section is also amended to clarify that references to applications are references to "applications for assistance," as defined in the chapter. The section is further amended to correct the deadline for receiving a loan commitment from six to seven months from the date of notification.

Section 371.22, relating to Administrative Cost Recovery, is amended to eliminate the requirement for an administrative cost recovery fee to be assessed from disadvantaged communities which are receiving additional subsidies in the form of forgiveness of loan principal. This change will bring the Board's rules into compliance with the United States Environmental Protection Agency's proposed regulations for administering the DWSRF program.

Section 371.24, relating to Disadvantaged Community Program through Loan Subsidies, is amended to provide that projects which qualify as disadvantaged community projects are entitled to receive a 30-year loan, regardless of whether funds for subsidies are available for the project. This change will bring the Board's rules into compliance with the United States Environmental Protection Agency's proposed regulations for administering the DWSRF program. Section 371.24(d) is amended to add a title for the subsection that is consistent with other subsections of the section.

Section 371.25, relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is amended to specify the conditions under which unused disadvantaged community funds may be made available for disadvantaged communities listed in future Intended Use Plans. By allowing for a rollover of unused funds, this change will enable a more complete utilization of subsidy monies over a period of time. A typographical error is corrected in §371.25(c).

New §371.90, relating to Force Account, is adopted to specify for applicants the conditions under which the applicant may utilize its own employees and/or equipment to construct all or part of a project. The force account provision is offered as a limited alternative to awarding competitively bid contracts on minor phases of a project in situations where efficiencies would clearly result from the use of force account.

No comments were received on the proposed amendments or new section.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §371.2

The amendments and new section are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 16, 2000.

TRD-200005818
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: September 5, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 463-7981

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SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.19-371.22, 371.24, 371.25

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 16, 2000.

TRD-200005819
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: September 5, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 463-7981

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SUBCHAPTER G. BUILDING PHASE

31 TAC §371.90

The new section is adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

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 16, 2000.

TRD-200005820
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: September 5, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.365

The Comptroller of Public Accounts adopts a new §3.365, concerning sales of clothing and footwear during a three-day period in August, without changes to the proposed text as published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6474).

The new section reflects the addition to the Tax Code of §151.326 and changes to Tax Code, §151.3111. Senate Bill 441, 76th Legislature, 1999, provides for a three-day sales tax holiday on sales of certain articles of clothing and footwear. This section sets out guidelines for administering the three-day sales tax holiday.

No comments were received regarding adoption of the new section.

This section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §151.326 and §151.3111.

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 18, 2000.

TRD-200005864
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 7, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION
SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The Texas Commission on Fire Protection adopts an amendment to §423.3, concerning minimum standards for basic structure fire protection personnel certification, without changes to the text published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5285). The amendment adds language to allow the acceptance of the American Red Cross Emergency Response course in lieu of certification from the Texas Department of Health, as an Emergency Care Attendant (ECA).

The amendment provides more flexibility to fire departments to obtain emergency medical training required for fire fighter certification and addresses problems with course availability for Texas Department of Health emergency care attendant courses in some areas of Texas. The commission has reviewed the curriculum for the American Red Cross (ARC) Emergency Response course and found it to be substantially equivalent to the curriculum adopted by the Texas Department of Health for ECA. Both curricula are based on the U.S. Department of Transportation Emergency Medical Services First Responder Training Course and the Federal Emergency Management Agency document entitled "Recognizing and Identifying Hazardous Materials." Both curricula meet the minimum requirements of NFPA 1001 for emergency medical care performance capabilities for entry-level fire fighters, including infection control, CPR, bleeding control, and shock management. The commission also received commitments from the American Red Cross regarding test administration for ARC certification that satisfied concerns about test security.

The amendment allows the acceptance of the American Red Cross Emergency Response course as an alternative to certification from the Texas Department of Health, as an Emergency Care Attendant (ECA). An applicant for structural fire protection personnel certification will provide a certificate from American Red Cross that documents successful completion of the Emergency Response course that must include a minimum of 53 hours, including optional lessons and enrichment sections, in order to meet the EMS training and certification requirements for basic fire fighter certification.

Comments in favor of the proposal were received from representatives of the American Red Cross and the Texas Forest Service. Commentators in favor of the proposal stated that the proposal would make more options available to fire departments to satisfy the emergency medical service training requirements for entry level fire fighters, particularly in geographic regions of the state that have experienced problems in obtaining ECA classes. Commentators in favor of the proposal noted that the American Red Cross Emergency Response training course had been review by the Texas Department of Health and approved for 52 hours of EMS continuing education credit. American Red Cross representatives stated that the course met the minimum curriculum requirements of the U.S. Department of Transportation Emergency Medical Services First Responder Training Course and the Federal Emergency Management Agency document entitled "Recognizing and Identifying Hazardous Materials." A representative of the Texas Department of Health also testified as to benefits of recognizing ECA certification and stated that a cursory review of the American Red Cross Emergency Response training course indicated that it was substantially equivalent to ECA and that the Texas Department of Health was considering allowing persons completing the ARC course to challenge the test for ECA.

Comments against the proposal were received from representatives of the Texas State Association of Fire Fighters, the Kingsville Fire Department, Addison Fire Department, the Rowlett Fire Department, the Garland Fire Department, and a fire instructor. One commentator argued against the proposal because it only allowed one alternative to ECA certification

from the Health Department. The commission disagreed with the commentator for the reason that any EMS training program other than ARC could and should be reviewed by the commission for equivalency. One commentator argued against the proposal for the reason that it did not include certain skills from the ECA curriculum. The commission disagreed with the commentator because it found that the curricula were substantially equivalent, that the skills referred to by the commentator were actually higher level emergency medical technician skills, and that the ARC course met the requirements for NFPA medical competencies for entry level fire fighters. Several commentators argued that the state could exercise no oversight with respect to curriculum changes by the American Red Cross, a private entity and public input would be limited. The commission disagreed with the commentators for the reason that the agency would be able to monitor curriculum changes by the ARC, that both ARC and TDH curricula are based on national standards from the U.S. Department of Transportation, and the commission could repeal its recognition of ARC training if necessary.

The amendment is adopted under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the adopted amendment.

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 14, 2000.

TRD-200005704
T. R. Thompson
General Counsel
Texas Commission on Fire Protection
Effective date: September 3, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 239-4913

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2458 on October 4, 2000 at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. 99-1363 dated October 1, 1999 and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability for Expected Loss Rates and Discount Ratios. Staff's petition (Ref. No. W-0800-21-I), was filed on August 23, 2000.

The petition requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 2001. The petition also requests that the table amending the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance Manual concerning the Expected Loss Rates and Discount Ratios be made effective for workers' compensation policies with an effective date on or after January 1, 2001.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60(d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1992 through 1996. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1993 through 1997. The staff's proposed classification relativities reflect changes in experience that occur over time, due to such things as technological advances and improvement in safety programs.

The indicated resulting relativities were balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities that have been balanced overall to the level of the current relativities to +25% and -25%. This would help to minimize possible rate shock due to large indicated changes in the relativities.

Modifications to the classification relativities require concurrent changes in the table of Expected Loss Rates and Discount Ratios. The table is contained in the Manual as part of the uniform experience rating plan. The current Table II of the Manual concerning Experience Loss Rates and Discount Ratios was adopted on October 1, 1999 and became effective on January 1, 2000. The current expected loss rates are essentially based on the level of losses used to experience rate a policy effective on July 1, 2000. Staff proposes an adjustment to reflect the change in classification relativities and to make the expected loss rates more reflective of the level of losses that would be used to experience rate policies that would be effective in 2001.

Staff proposes to cap changes in the new expected loss rates to +25% and -25%. This would help minimize possible premium shock, which could otherwise occur based solely on the changes in the expected loss rates.

Copies of the full text of the staff petition and the proposed revised schedule of classification relativities and the table of expected loss rates are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Angie Arizpe at (512) 322-4147 (refer to Ref. No. W-0800-21-I)

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

TRD-200005935

Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 23, 2000

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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.

Agency Rule Review Plans

Texas Education Agency

Title 19, Part 2

Filed: August 16, 2000

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Texas Department of Human Services

Title 40, Part 1

Filed: August 22, 2000

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Railroad Commission of Texas

Title 16, Part 1

Filed: August 22, 2000

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Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

In accordance with the Appropriations Act of 1997, Texas House Bill 1, Article IX, §167, 75th Legislature, Regular Session (1997), the Office of the Attorney General, Bankruptcy and Collections Division, files its notice of intention to review the rules contained in 1 TAC §§59.1, 59.2 and 59.3. The agency's reason for adopting the rules contained in these chapters continues to exist. Each rule, however, will be reviewed to determine whether the rule reflects current legal, policy, and procedural considerations

All comments and/or questions on this rule review should be directed to Ronald R. Del Vento, Division Chief, Office of the Attorney General, Bankruptcy & Collections Division, P.O. Box 12548, Mail Code 008, Austin, Texas 78711-2548, Phone: (512) 463-2173.

Any proposed amendments to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. Such proposed rule amendments will be open for public comment prior to final adoption by the Agency, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

TRD-200005876
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 21, 2000

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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 4, consisting of §§4.2-4.12, regarding Currency Exchange. This review is undertaken pursuant to the Government Code, §2001.039, which requires an agency to review each of its rules within four years of its effective date, and each four years thereafter. 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 20, 2000.

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-200005869
Everette D. Jobe
General Counsel
Finance Commission of Texas
Filed: August 21, 2000

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Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board proposes to readopt Chapter 13, Financial Planning, in accordance with §2001.039 Texas Government Code.

The agencies reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed readoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200005917
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: August 22, 2000

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The Texas Higher Education Coordinating Board proposes to readopt Chapter 17, Campus Planning, in accordance with §2001.039 Texas Government Code.

The agencies reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed readoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200005916
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: August 22, 2000

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Texas Department of Protective and Regulatory Services

Title 40, Part 20

The Texas Department of Protective and Regulatory Services (TDPRS) proposes to review Title 40 Texas Administrative Code Chapter 709, Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care. This review is pursuant to the Texas Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167.

TDPRS has found that the reason for adopting this chapter does not continue to exist and is repealing this chapter. The proposed repeals may be found in the Proposed Rules section of this issue of the *Texas Register*.

Comments on the review of 40 TAC Chapter 709, Early and Periodic Screening, Diagnosis, and Treatment Integrated Behavior Management Services in Foster Care, may be submitted to Clarice Cefai at (512) 438-5330, or TDPRS, Texas Register Liaison, Legal Services, P.O. Box 149030, Mail Code E-611, Austin, Texas 78714-9030, or faxed to (512) 438-3022. All comments must be received within 30 days of publication in the *Texas Register*

TRD-200005843
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: August 18, 2000

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Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 313, Officials and Rules of Horse Racing. This review is conducted in accordance with Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9 - 10.13.

The Commission has conducted a preliminary review of the rules in Chapter 313 and has determined that reasons for adopting most of these rules continue to exist. Chapter 313 specifies the officials required to supervise the conduct of a pari-mutuel horse race, the duties of those officials, the responsibilities of jockeys, and all procedures for conducting a pari-mutuel horse race, including procedures for entries, scratches, allowances, and claiming horses.

The preliminary review has revealed that some rules should be amended or repealed to make racing safer for the jockeys and the horses, to conform to industry standards, practice, and terminology, and to make the language internally consistent with other Commission rules. Therefore, the Commission is proposing amendments to §§313.1 - 313.2, 313.4 - 313.5, 313.21 - 313.25, 313.41 - 313.52, 313.57, 313.60 - 313.61, 313.101 - 313.104, 313.106 - 313.108, 313.110, 313.131 - 313.136, 313.162, 313.164 - 313.166, 313.168, 313.302, 313.305, 313.310, 313.312, 313.406 - 313.411, 313.421, 313.423 - 313.425, 313.442 - 313.444, 313.446, 313.449 - 313.450, 313.501 - 313.505, and 313.507. The Commission is proposing the repeal of §313.111 and §313.311.

The proposed amendments and repeals may be found in the Proposed Rules section of the *Texas Register*. In addition, a memorandum which outlines each change to this chapter may be obtained from Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699. The Commission will accept comment on whether each rule in Chapter 313 should continue to exist, as well as the suggested amendments and repeals proposed by the Commission.

The Commission is not proposing changes to §§313.26, 313.53 - 313.56, 313.58 - 313.59, 313.105, 313.109, 313.161, 313.163, 313.167, 313.301, 313.303 - 313.304, 313.306 - 313.309, 313.313 - 313.314, 313.401 - 313.405, 313.422, 313.441, 313.445, 313.447 - 313.448, and 313.506. Comments regarding whether reason exists for these sections to continue in effect may be submitted on or before October 2, 2000, to Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

Questions relating to this notice of intent to review should be directed to Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, FAX (512) 833-6907.

TRD-200005792
Judith Kennison
General Counsel
Texas Racing Commission
Filed: August 16, 2000

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The Texas Racing Commission files this notice of intent to review Chapter 315, Officials and Rules of Greyhound Racing. This review is conducted in accordance with Chapter 1275, Acts of the 75th Legislature, 1997, §55 and the General Appropriations Act, Article IX, Acts of the 76th Legislature, 1999, §9-10.13.

The Commission has conducted a preliminary review of the rules in Chapter 315 and has determined that reasons for adopting most of these rules continue to exist. Chapter 315 specifies the officials required to supervise the conduct of a pari-mutuel greyhound race, the duties of those officials, and all procedures for conducting a pari-mutuel greyhound race.

The preliminary review has revealed that some rules should be amended or repealed to conform to industry standards, practice, and terminology and to make the language internally consistent with other Commission rules. Therefore, the Commission is proposing amendments to §315.1 - 315.3, 315.31 - 315.35, 315.40, 315.102 - 315.103, 315.105 - 315.107, 315.110, 315.209, and 315.211. The Commission is proposing the repeal of §315.109.

The proposed amendments and repeal may be found in the Proposed Rules section of the *Texas Register*. In addition, a memorandum which outlines each change to this chapter may be obtained from Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699. The Commission will accept comment on whether each rule in Chapter 315 should continue to exist, as well as the suggested amendments and repeals proposed by the Commission.

The Commission is not proposing changes to §315.4 - 315.5, 315.36 - 315.39, 315.41 - 315.42, 315.101, 315.104, 315.108, 315.111, 315.201 - 315.208, and 315.210. Comments regarding whether reason exists for these sections to continue in effect may be submitted on or before October 2, 2000, to Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

Questions relating to this notice of intent to review should be directed to Judith L. Kennison, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, FAX (512) 833-6907.

TRD-200005793
Paula C. Flowerday
General Counsel
Texas Racing Commission
Filed: August 16, 2000

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Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas, on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Chapter 3, Subchapter E and F, consisting of §3.91 (Loan Production Offices),§3.92 (User Safety at Unmanned Teller Machine), and §3.111,(Confidential Information).

Notice of the review was published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4883). No comments were received with respect to these rules. The department believes that the reasons for adopting these rules continue to exist. The department recognizes that the rules encompassed in this review will require minor amendments to conform statutory references to legislation enacted by the 76th Legislature, effective September 1, 1999. The department anticipates that conforming proposed rules will be published in the *Texas Register* for comment by December 31, 2000.

The finance commission readopts these sections, pursuant to the requirements of Government Code, §2001.039, and finds that the reason for adopting these rules continues to exist.

TRD-200005840
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: August 18, 2000

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Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission readopts without changes Title 13, Part II, Chapters 15 (Administration of Federal Programs), 17 (State Architectural Programs), and 23 (Agency Publications.)

This review was conducted in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, and codified as Texas Government Code, §2001.039, as added by SB 178, 76th Legislature.

The proposed review was published in the April 14, 2000, edition of the *Texas Register* (25 TexReg 3309.) No comments were received regarding the readoption of these rules. The Texas Historical Commission has determined that the reason for adopting these rules continues to exist.

TRD-200005877
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Filed: August 21, 2000

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Texas Department of Public Safety

Title 37, Part 1

The Texas Department of Public Safety (DPS) has completed the review of Chapter 1-Organization and Administration; and Chapter 27-Crime Records. Pursuant to the requirements of §167 of the Appropriations Act, the DPS readopts the following: Chapter 1 and Chapter 27.

The proposed review was published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6819).

The DPS received no comments as to whether the reason for readopting the rules continues to exist. The DPS finds that the reason for readopting these rules continues to exist. Issued in Austin, Texas on August 16, 2000. Thomas A. Davis, Jr. Director Texas Department of Public Safety

TRD-200005882
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 21, 2000

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas readopts without change the following sections of 16 Texas Administrative Code, Part 1, Chapter 3: §3.9, relating to disposal wells; §3.10, relating to restriction of production of oil and gas from different strata; §3.33, relating to geothermal resource production test forms required; §3.40, relating to assignment of acreage to pooled development and proration units; §3.42, relating

to oil discovery allowable; §3.45, relating to oil allowables; §3.46, relating to fluid injection into productive reservoirs; §3.48, relating to capacity oil allowables for secondary or tertiary recovery projects; §3.50, relating to enhanced oil recovery projects--approval and certification for tax incentive; §3.51, relating to oil potential test forms required; §3.70, relating to commission forms required to be filed (commonly known as Statewide Rule 80); §3.84, relating to gas shortage emergency response; and, §3.103, relating to certification for severance tax exemption for casinghead gas previously vented or flared.

The notice of review was published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6561). The Commission received no comments during the public comment period. After review and consideration in accordance with Texas Government Code §2001.039, the Railroad Commission has determined that the reasons for the rules continue to exist and therefore readopts these sections without change.

Issued in Austin, Texas, on August 22, 2000.

TRD-200005890
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: August 22, 2000

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.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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 for the Blind

Request for Proposal, Legal Services

The Texas Commission for the Blind (Commission) requests proposals from attorneys or legal firms interested in providing legal services regarding the Business Enterprises Program (Program), which is administered by the Commission under the authority and provisions of the Randolph-Sheppard Act (20 U.S.C. Sections 107-107f), the Texas Human Resources Code, Title 5, Chapter 94, and the Texas Administrative Code, Chapter 167. The Program provides employment opportunities for blind persons in food service businesses.

The contract will be for a period of one year beginning September 1, 2000, or for one year from the date of award, with a one-year option to extend. Selection of a contractor will be made on the basis of demonstrated competence and the ability to perform the services at a fair and reasonable price.

Nature of Services: The contract will be for providing a wide range of legal services associated with the administration of the Program. The Commission obtains permits to operate food service and vending locations on state and federal sites; enters into contracts with private entities for the same purpose; and licenses persons who are blind to manage the food service and vending locations. The Randolph-Sheppard Act provides for a grievance system for licensed managers who are dissatisfied with decisions of the Commission. These grievances include administrative hearings and arbitrations. Legal assistance is frequently needed concerning all of these matters.

Experience/Qualifications:

1. The principal attorney(s) must have a minimum of 10 years experience as a licensed attorney in the State of Texas.

2. The principal attorney(s) must have 5 years of trial court experience in both state and federal courts with preference given for experience in the Federal Court of Claims.

3. The principal attorney(s) must have 5 years experience in providing counsel for arbitrations.

Preference will be given to:

--Attorneys or legal firms that have experience working with the Administrative Procedures Act and have been listed as counsel for at least five administrative proceedings in the last five years;

--Attorneys or legal firms that have provided advice to a state agency on a continuing basis for at least five years;

--Attorneys or legal firms that have extensive experience in litigating and arbitrating issues under the Randolph-Sheppard Act, with additional preference given for experience with Federal Court cases in which the Randolph-Sheppard Act was the subject of litigation;

--Attorneys or legal firms that have acted as lead counsel in arbitrations filed under the Randolph-Sheppard Act.

Responses: Responses to this RFP should include as a minimum the following information:

1. A description of the firm's or attorney's qualifications for performing the legal services, including the firm's or attorney's prior experience with the Randolph-Sheppard Act;

2. A description of the firm's or attorney's past experience as counsel for state agencies, including employment with a state agency as an attorney;

3. The names, experience, and technical expertise of each attorney who may be assigned to work on the contract, and the availability of the lead attorney(s) and others assigned to the project;

4. Disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Commission or to the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed official(s); and

5. Confirmation of willingness to comply with policies, directives, and guidelines of the Commission and the Attorney General of Texas.

The response must also include, in a separate sealed envelope, the submission of fee information in the form of hourly rates for each attorney, paralegal, or any other staff, who may be assigned to perform services. The fee information must include all other billable expenses.

Travel Expenses: Travel expenses during the contract period shall be reimbursed in accordance with the State of Texas Travel Regulations and the Official Mileage Guide as they apply to state employees.

Additional Requirements:

1. Law firms responding to this proposal must have an office in Texas. The firm should have a place of business in Austin, Texas, or be willing to either waive, or substantially limit, the expenses attributable to travel.

2. The successful law firms and/or attorneys will provide services at an agreed hourly rate that represents at least a 10% discount from the usual rate charged by such attorney and/or firm. Paralegals, upon prior written approval by the Commission, may provide services at an agreed hourly rate that shall represent at least a 10% discount from the usual rate charged by such paralegal.

3. The successful law firms and/or attorneys will complete and submit an "Affirmative Action Questionnaire" and provide other appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women. The Attorney General must approve the agreement between the Commission and its counsel.

The Attorney General has prescribed a form contract for such agreements and has indicated that he will not approve any variant of this form contract absent exceptional circumstances.

Proposal Deadline and Contact Person:

All proposals must show the proposal opening date and requisition number in the lower left hand corner of sealed proposal envelope; must show the return address of the firm; and must be received no later than 5:00 p.m., September 15, 2000. No proposals submitted after this time will be considered.

Proposals may be mailed or hand-delivered to the Purchasing Department, Texas Commission for the Blind, 4800 N. Lamar, Suite 360, Austin, Texas 78756. Inquiries regarding clarification of specifications can be directed to Vikki Meeker at (512) 377-0640.

TRD-200005817
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: August 16, 2000

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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 10, 2000, through August 17, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Timothy DeSandro; Location: The project site is located on Galveston Bay on the north side of the Texas City Dike, approximately 4.75 miles east of the landward end of the dike, in Texas City, Galveston County, Texas. CCC Project No.: 00-0287-F1; Description of Proposed Action: The applicant proposes to revise the project plans to relocate the proposed excursion vessel dock on the north side of the Texas City Dike. The applicant proposes to spud a 240-foot by 40-foot by 6-foot barge and two 40-foot by 7-foot by 5-foot pontoons for use as a loading/unloading dock for an excursion vessel. The water depth at the waterward end of the dock structure will be approximately -7 to -8 feet mean low tide. A hinged gangway will also be constructed to transport passengers to and from the dock. No dredging or fill activities will be performed in association with the proposed project. Type of Application: U.S.A.C.E. permit application #22005(Rev.) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Coast Guard & U.S. Department of Transportation; CCC Project No.: 00-0286-F2; Description of Proposed Activity: The applicant proposes to demolish Galveston South Jetty Lighthouse in Galveston, Texas. The project scope entails the demolition and removal of all structure materials above the concrete slabs as scrap. The concrete slabs will be left in place atop the jetty. These efforts will most likely be carried out by a crane barge moored alongside the jetty with transport barges to remove all materials to shore.

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-200005921
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 23, 2000

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified individuals and independent firms to provide professional appraisal services to the Comptroller. Successful respondent will assist the Comptroller in conducting a unit valuation appraisal of Southwestern Bell Telephone Company (SWBT), and provide other related services to Comptroller in connection with the Comptroller's Annual Property Value Study (PVS). Successful respondent will be expected to begin performance of the contract awarded under this RFP, if any, on or about October 1, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, September 1, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace after Friday, September 1, 2000, 2 p.m. (CZT).

Questions and Mandatory Letters of Intent: All written inquiries, questions, and Mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Monday, September 18, 2000. Prospective respondents are encouraged to fax

Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. The responses to questions and other information pertaining to this procurement will be posted on the Texas Marketplace at: http://www.marketplace.state.tx.us.

Closing Date: Proposals must be received in Deputy General Counsel for Contracts Office at the location specified above (ROOM G-24) no later than 2 p.m. (CZT), on Monday, September 25, 2000. Proposals received in Room G-24 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 1, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - September 18, 2000, 2 p.m. CZT; Proposals Due - September 25, 2000, 2 p.m. CZT; Contract Execution - October 1, 2000, or as soon thereafter as practical; Commencement of Project Activities - October 1, 2000.

TRD-200005926
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 23, 2000

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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 §§303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/28/00 - 09/03/00 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/28/00 - 09/03/00 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/00 - 09/30/00 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/00 - 09/30/00 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.

TRD-200005886
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 22, 2000

♦ ♦ ♦

Court of Criminal Appeals

Amendments to Texas Rules of Appellate Procedure

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 00-100

AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. Rules 42.2(a) and 67.1 of the Texas Rules of Appellate Procedure, adopted by Order of August 15, 1997, are amended and Rule 73 is adopted, as shown below. The format and style of these amended rules are part of the official promulgation.

2. These changes, with any modifications made after public comments are received, take effect January 1, 2001. Unless this order provides otherwise, they shall govern all proceedings in motions for new trial, appeals, petitions for discretionary review, and petitions or applications for extraordinary writs thereafter brought and in all such proceedings then pending, except to the extent that in the opinion of the court their application in a particular proceeding then pending would not be feasible or would work injustice, in which case the former procedure may be followed.

3. The notes and comments appended to these changes are incomplete, are included only for the convenience of the bench and bar, and are not a part of the rules.

4. The Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

SIGNED AND ENTERED THIS 10TH DAY OF AUGUST, 2000.

Michael J. McCormick, Presiding Judge

Lawrence E. Meyers, Judge

Stephen W. Mansfield, Judge

Sharon F. Keller, Judge

Tom Price, Judge

Sue Holland, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Mike Keasler, Judge

RULE 42. DISMISSAL

42.2. Voluntary Dismissal in Criminal Cases.

(a) At any time before the appellate court's decision, the appellate court may dismiss the appeal if the [~~appellant~~] party that appealed withdraws [~~his or her~~] its notice of appeal-[~~The appellant and his or her attorney must sign the written withdrawal and file it~~] by filing a written withdrawal in duplicate with the appellate clerk, who must immediately send the duplicate copy to the trial court clerk. An appellant must personally sign the written withdrawal.

Notes and Comments

Comment to 2000 change: In the first sentence of Rule 42.2 "appellant" is replaced by "party that appealed," to make it clear that the rule applies to the State when it is the appealing party. See State v. Miles, 994 S.W.2d 410 (Tex.App. C Waco 1999). The requirement that the appellant's attorney must sign the withdrawal is deleted,

and the last sentence is added, to remove any implication that the attorney may veto the appellant's decision to withdraw the notice of appeal. The word "personally" is added to emphasize that the appellant must participate in the withdrawal of his or her appeal. The provisions of Rule 9.1(a) do not restrict the appellant's ability to withdraw the notice of appeal.

RULE 67. DISCRETIONARY REVIEW WITHOUT PETITION

67.1. Four Judges Vote. By a vote of at least four judges, the Court of Criminal Appeals may [~~without a petition for discretionary review having been filed~~] grant review of a court of appeals' decision in a criminal case at any time before the mandate of the court of appeals issues. An order granting review will be filed with the clerk of the Court of Criminal Appeals, who must send a copy to the court of appeals clerk.

Notes and Comments

Comment to 2000 change: Language which was in the catchline of former Rule 201 has been deleted from Rule 67.1, to restore the substance of the rule, and to remove any implication that the court may not grant review on its own motion when a petition for discretionary review has been filed.

RULE 73. POST CONVICTION APPLICATIONS FOR WRITS OF HABEAS CORPUS

73.1. Form of Application in Felony Case (other than Capital).

(a) *Prescribed Form.* An application for post conviction habeas corpus relief in a felony case without a death penalty, under Code of Criminal Procedure article 11.07, must be made in the form prescribed by the Court of Criminal Appeals in an order entered for that purpose.

(b) *Availability of form.* The clerk of the convicting court will make the forms available to applicants on request, without charge.

(c) *Contents.* The person making the application must provide all information required by the form. The application must specify all grounds for relief, and must set forth in summary fashion the facts supporting each ground. The application must not cite cases or other law. The application must be typewritten or handwritten legibly.

(d) Verification. The application must be verified by either:

(1) oath made before a notary public or other officer authorized to administer oaths, or

(2) if the person making the application is an inmate in the Institutional Division of the Department of Criminal Justice or in a county jail, an unsworn declaration in substantially the form required in Civil Practice and Remedies Code chapter 132.

73.2. Noncompliance.

The clerk of the convicting court will not file an application that is not on the form prescribed by the Court of Criminal Appeals, and will return the application to the person who filed it, with a copy of the official form. The clerk of the Court of Criminal Appeals may, without filing an application that does not comply with this rule, return it to the clerk of the convicting court, with a notation of the defect, and the clerk of the convicting court will return the application to the person who filed it, with a copy of the official form.

Notes and Comments

Comment to 2000 change: Rules 73.1 and 73.2 are added, and a form is added in an appendix.

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM FINAL FELONY CONVICTION UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

INSTRUCTIONS

1. You must use this form to file an application for a writ of habeas corpus seeking relief from a final felony conviction (other than a death-penalty case), under Code of Criminal Procedure article 11.07.

2. The clerk of the court in which you were convicted will make this form available to you, on request, without charge.

3. If you do not follow the instructions on this form, the clerk of the court will write a note of the defect on your application and return the form to you without filing it.

4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.

5. Answer every item that applies to you on the form. You may use additional pages only if you need them for item 18, the facts supporting your ground for relief. Do not attach any additional pages for any other item.

6. You must include all grounds for relief, and all facts supporting each ground for relief, in the application you file seeking relief from any judgment of conviction.

7. Do not cite cases or other law in this application. Do not make legal arguments in this application. Legal citations and arguments may be made in a separate memorandum.

8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form. You may be prosecuted and convicted for aggravated perjury if you make any false statement of a material fact in this application.

9. When the application is fully completed, mail the original to the clerk of the convicting district court. Keep a copy of the application for your records.

Cause No. _____
(The Clerk of the convicting court will fill this line.)

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

_____ / _____ /
NAME OF APPLICANT (Please print full name) DATE OF BIRTH

_____ _____PLACE OF CONFINEMENT

(1) What court entered the judgment of conviction you want relief from? (Give the number and county of the court.)

_____

_____

(2) What was the cause number in the trial court?_____

(3) What was the trial judge's name?_____

(4) What was the date of judgment?_____

(5) What was the length of sentence? _____

(6) Who assessed punishment? (Check one) (a) Judge ( ); (b) Jury ( )

(7) What offense or offenses were you were convicted of (all counts)?

_____

_____

_____

(8) What was your plea? (Check one)

(a) Not guilty ( )
(b) Guilty ( )
(c) Nolo Contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

_____

_____

(9) **Did you have a jury trial?(check one)**

(a) Jury ( )
(b) Judge only ( )

(10) **Did you testify at the guilt/innocence phase of trial?** Yes ( ) No ( )

(11) **Did you testify at the sentencing phase of trial?** Yes ( ) No( )

(12) **Did you appeal from the judgment of conviction?** Yes ( ) No( )

(13) **If you did appeal, answer the following questions:**

(a) **Which court of appeals?**_____

(b) **What was the cause Number?** _____

(c) **What was the decision?** _____

(d) **What was the date of the decision?**_____

(e) **Did you file a petition for discretionary review?** Yes ( ) No ( )

(f) **If your answer to (e) was ""yes," answer the following questions:**

(g) **What was the cause number in the Court of Criminal Appeals?**

_____

(h) **What was the decision?**_____

(i) **What was the date of decision?**_____

(14) **Have you previously filed an application for writ of habeas corpus under Article 11.07 for relief from this conviction?**

Yes ( ) **No ( )**

(15) **If your answer to (14) was ""yes," answer the following questions:**

(a) **What was the Court of Criminal Appeals writ number?** _____ _____

(b) **What was the decision?** _____

(c) **What was the date of decision?** _____

(d) **What is the reason the current claims were not presented and could not have been presented in an earlier application?**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(16) **Do you have any petition or appeal pending in any court, either state or federal,**

attacking the same conviction?

Yes ( ) **No ( )**

(17) **If you are presenting a claim for time credit, have you presented the claim to the time credit resolution system of the Texas Department of Criminal Justice--Institutional Division?**

Yes ( ) **No ( )**

(a) **If your answer to (17) was ""yes," answer the following questions:**

What was the date of decision? _____

Why are you not satisfied with the decision? _____

_____

_____

_____

(b) **If your answer to (17) was "no," why have you not presented the claim to the time credit resolution system of the Texas Department of Criminal Justice--Institutional Division?**

_____

_____

_____

_____

(18) **State concisely every ground on which you claim that you are being unlawfully confined. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the grounds.**

For your information, the following is a list of the most frequently raised

grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. The grounds you may raise are not limited to those listed below. However, you should raise in this application all available grounds (relating to this conviction) on which you base your allegations that you are being unlawfully confined.

If you claim one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not simply check any of the grounds listed below.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and empaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

(k) Denial of time credits on sentence.

(l) Improper revocation of parole or mandatory supervision.

(m) Illegal sentence.

(n) **Invalid or defective indictment.**

(o) **No evidence or insufficient evidence.**

(A) **What is your Ground Number One:**_____

_____

What are the FACTS (tell your story briefly without citing cases or law):_____

_____

_____

_____

_____

_____

_____

(B) **What is your Ground Number Two:** _____

_____

What are the FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

_____

(C) **What is your Ground Number Three:** _____

_____

What are the FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

_____

(D) **What is your Ground Number Four:** _____

_____

What are the FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

_____

Wherefore, applicant prays that the Court grant applicant relief to which he may be entitled in this proceeding.

VERIFICATION

(Complete either the Oath Before Notary Public or the Inmate's Declaration)

Oath Before Notary Public

STATE OF TEXAS, COUNTY OF _____

_____, being first duly sworn, under oath, says: that he is the applicant in this action and knows the content of the above application and according to the applicant's belief, the foregoing allegations of the application are true.

_____
Signature of applicant

SUBSCRIBED AND SWORN TO BEFORE ME this ___ day of _____

_____
Notary Public

Inmate's Declaration

I, _____,
(inmate's name)

_____,

(name of TDCJ unit or county jail)

declare under penalty of perjury that according to my belief the foregoing information and allegations of the application are true and correct.

Signed on _____
(date)

_____
Signature of applicant

_____
Signature of attorney (if any)

Address of Attorney:

_____ _____

_____

_____

TRD-200005885

Troy Bennett
Clerk of the Court
Court of Criminal Appeals
Filed: August 21, 2000

♦ ♦ ♦

East Texas Council of Governments

Request for Proposals on Fiscal Year 2000 Audit Services

The East Texas Council of Governments (ETCOG), a political subdivision of the State of Texas covering the 14 county Uniform Planning Region 6, is soliciting a request for proposal (RFP) for independent audit services for fiscal year 1999-2000. Audit will cover federal and state grants and all other programs administered by ETCOG for the 12 month fiscal year ending September 30, 2000. Audit must comply with the Single Audit Act and related amendments as well as applicable Office of Management and Budget Circulars.

Potential respondents may obtain a copy of the RFP by contacting Judy Durland, Director of Finance, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas, 75662, or by calling (903) 984-8641. The deadline for RFP submission is **5:00 p.m., Friday, September 15, 2000**.

TRD-200006020
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: August 28, 2000

♦ ♦ ♦

Request for Qualifications on Legal Counsel

The East Texas Council of Governments (ETCOG), a political subdivision of the State of Texas covering the 14 county Uniform Planning Region 6, is soliciting a request for qualifications (RFQ) for general legal counsel services. The organization serves member governments and others in a variety of program activities involving funding from local, state and federal sources. Legal counsel services consist of administrative counseling, contract review and preparation, and organization advocacy in formal and informal proceedings before judicial and quasi-judicial bodies.

Potential respondents may obtain a copy of the RFQ by contacting Glynn Knight, Executive Director, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas, 75662, or by calling (903) 984-8641. The deadline for RFQ submission is **5:00 p.m., Wednesday, September 20, 2000**.

TRD-200006021
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: August 28, 2000

♦ ♦ ♦

Texas Education Agency

Notice of Amendments to Request for Proposals Concerning Collecting, Analyzing, and Reporting Information to the Texas Education Agency in Monitoring Publicly Funded Education Programs

The Texas Education Agency (TEA) published Request for Proposals (RFP) #701-00-048 concerning collecting, analyzing, and reporting information to TEA in monitoring publicly funded education programs in the August 18, 2000, issue of the *Texas Register* (25 TexReg 8081). The TEA is amending the *Texas Register* notice as follows

(1) The TEA is amending the Description paragraph of the notice to read, "The TEA is requesting proposals for identifying and managing the collection, analysis, and reporting of information to TEA for its monitoring of local educational agencies to determine overall program quality and effectiveness. The purpose of this RFP is to solicit and ultimately select proposal(s) with regard to the identification, employment, and logistical support of contracted individuals to be utilized during the 2000-2001 school year. Approximately 240 educational entities are scheduled for on-site monitoring of their regular education and alternative education programs for this upcoming school year (2000-2001). The activities to be conducted by the contractors are detailed in the RFP." This amendment reflects an increase in the number of educational entities scheduled for on-site monitoring from 195 to 240.

(2) The TEA is amending the Dates of Project paragraph to read, "All services and activities related to the RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than November 1, 2000, and an ending date of no later than May 30, 2001." This amendment reflects a change in the starting date from October 1, 2000, to November 1, 2000.

(3) The TEA is amending the Project Amount paragraph to read, "The proposer will make an offer based upon 240 sites to be visited and will be required to submit a detailed budget. The amount available for this contract is $765,055. This project is funded 100% from TEA funds." This amendment reflects an increase in the number of educational entities scheduled for on-site monitoring from 195 to 240 and an increase in the amount available for the contract from $665,055 to $765,055.

Further Information. For clarifying information about the RFP, contact Roland Hernandez, Division of Accountability Development and Support, TEA, (512) 463-9716.

TRD-200005931
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 23, 2000

♦ ♦ ♦

Public Notice Announcing the Availability of the Elementary and Secondary Education Act (ESEA) Title VI, Innovative Education Program Strategies, 1996-97 Annual Summary Report for Texas

The Elementary and Secondary Education Act (ESEA), Title VI, Innovative Education Program Strategies, provided federal financial assistance to state and local educational agencies to improve elementary and secondary education through a variety of innovative assistance programs and services for children attending both public and private nonprofit schools.

The ESEA, Title VI, Innovative Education Program Strategies, 1996-97 Annual Summary Report for Texas is now available to the public through each regional education service center (ESC). In addition, senior colleges and universities in Texas were requested to place the report in their campus libraries. Parents, teachers, school administrators, private nonprofit school personnel, local community organizations, businesses, and other interested persons or agencies may review the document or copy it at personal expense at any ESC or Texas senior college or university library where the document is on file.

Interested persons or agencies may also request a copy at no charge via mail, telephone, fax, or e-mail from the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, Telephone (512) 463-9304, Fax (512) 463-9811, e-mail at dcc@tmail.tea.state.tx.us.

Additional information about the ESEA, Title VI, Innovative Education Program Strategies, 1996-97 Annual Summary Report may be obtained from Renée Graham, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8318.

TRD-200005932
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 23, 2000

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
El Paso	Biotech Pharmacy Inc	L05335	El Paso	00	08/04/00
Lake Jackson	Brazosport Cardiology	L05359	Lake Jackson	00	08/01/00
Jacksonville	Regional Health Care Center	L05362	Jacksonville	00	08/07/00
Fort Worth	Beckman Consruction Company	L05352	Fort Worth	00	08/11/00

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Abilenene Christian University	L01460	Abilene	17	08/08/00
Abilene	NC-SCHI Inc	L02434	Abilene	62	08/09/00
Angleton	Angleton Danbury General Hospital	L02544	Angleton	23	08/14/00
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	62	08/03/00
Arlington	Mobile Diagnostic Systems	L03212	Arlington	24	08/11/00
Arlington	Healthsouth Diagnostic Centers of Texas LP	L05033	Arlington	14	08/10/00
Austin	Consolidated Technologies Inc	L02045	Austin	21	08/03/00
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	24	08/02/00
Big Springs	Scenic Mountain Medical Center	L00763	Big Springs	36	08/09/00
Bishop	Ticona Polymers Inc	L02441	Bishop	33	08/14/00
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	46	08/02/00
Carrollton	Tenet Health System Hospital Dallas Inc	L03765	Carrollton	31	08/10/00
Carrollton	Tenet Health System Hospital Dallas Inc	L03765	Carrollton	32	08/11/00
Corpus Christi	Rock Engineering and Testing Lab Inc	L05168	Corpus Christi	03	08/14/00
Dallas	Animal Radiology Clinic	L03535	Dallas	17	08/09/00
Dallas	Tenet Health System Hospitals Dallas Inc	L02314	Dallas	41	08/11/00
Dallas	Tenet Health System Hospitals Dallas Inc	L02314	Dallas	40	08/10/00
Deer Park	Shell Chemical Company	L04933	Deer Park	05	08/11/00
Denton	University of North Texas Physics Department	L00101	Denton	65	08/03/00
D/FW	GE Lighting	L03819	D/FW	12	08/11/00
Dumas	Memorial Hospital	L03540	Dumas	15	08/04/00
Fort Worth	Huguley Memorial Medical Center	L02920	Fort Worth	21	08/03/00
Fort Worth	Professional Service Industries Inc	L00931	Fort Worth	111	08/04/00
Houston	Baker Hughes INTEQ	L04452	Houston	30	08/10/00
Houston	Memorial Hermann Hospital System	L01168	Houston	55	08/11/00
Laredo	Laredo Regional Medical Center	L02192	Laredo	18	08/03/00
Longview	Longview Asphalt Inc	L04827	Longview	04	08/14/00

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Lubbock	Covenant Health System	L04881	Lubbock	18	08/03/00
Mt. Pleasant	Titus County Memorial Hospital	L02921	Mt. Pleasant	17	08/10/00
Odessa	Medical Center Hospital	L01223	Odessa	67	08/03/00
Palestine	Palestine Principal Healthcare Limited Partnership	L02728	Palestine	33	08/02/00
Pasadena	Conam Inspection	L05010	Pasadena	29	08/14/00
Pasadena	Superior Testing Services	L05145	Pasadena	13	08/14/00
San Antonio	Alamo Heart Associates Pa	L04909	San Antonio	02	08/11/00
San Antonio	Baptist Health System	L00455	San Antonio	92	08/09/00
San Antonio	Baptist Health System	L00455	San Antonio	93	08/09/00
San Antonio	CTRC Research Foundation	L03350	San Antonio	27	08/10/00
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	148	08/04/00
San Antonio	Santa Rosa Health Care	L02237	San Antonio	61	08/11/00
San Antonio	Santa Rosa Health Care	L02237	San Antonio	60	08/04/00
San Antonio	South Texas Radiology	L00325	San Antonio	105	08/10/00
San Antonio	South Texas Radiology	L00325	San Antonio	104	08/03/00
Seguin	Guadalupe Valley Hospital	L02292	Seguin	20	08/02/00
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	25	08/03/00
ThroughoutTx	Anatec Inc	L04865	Nederland	35	08/05/00
ThroughoutTx	Baker Huges Oilfield Operations Inc	L00446	Houston	126	08/03/00
ThroughoutTx	BJ Services Company USA	L02684	Houston	37	08/10/00
ThroughoutTx	CME Testing And Engineering Inc	L05263	College Station	02	08/04/00
ThroughoutTx	D-Arrow Inspection Inc	L03816	Houston	62	08/04/00
ThroughoutTx	Eagle X-Ray	L03246	Mont Belvieu	62	08/07/00
ThroughoutTx	GEOCO Inc	L05146	Midland	05	08/02/00
ThroughoutTx	GCT Inspection Inc	L02378	South Houston	59	08/02/00
ThroughoutTx	High Tech Testing Service Inc	L05021	Longview	27	08/04/00
ThroughoutTx	Jose Luis Hernandez	L05183	Laredo	02	08/02/00
ThroughoutTx	Jose Luis Hernandez	L05183	Laredo	03	08/11/00
ThroughoutTx	Longview Inspection Inc	L01774	Houston	156	08/04/00
ThroughoutTx	N-Spec Quality Services Inc	L05113	Corpus Christi	10	08/01/00
ThroughoutTx	Reinhart and Associates Inc	L03189	Austin	34	08/01/00
ThroughoutTx	Ruiz Testing Inc	L04948	San Antonio	02	08/07/00
ThroughoutTx	Superior Testing Services	L05145	Pasadena	12	08/03/00
ThroughoutTx	Westex Inspection Inc	L04775	Odessa	07	08/04/00
Wallisville	Envirotech Treatment Systems Inc	L05161	Wallisville	01	08/02/00
Wichita Falls	Pycor Wichita Fall Inc	L00523	Wichita Falls	33	08/03/00
TheWoodlands	The Woodlands Sports Medicine Center	L04390	TheWoodlands	10	08/04/00

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	City of Amarillo Water	L02222	Amarillo	08	08/14/00
Edna	Jackson County Hospital District	L04842	Edna	04	08/01/00
ThroughoutTx	Construction Consultants	L04912	Beaumont	05	08/09/00
Winnie	Soloco Texas LP	L04708	Winnie	11	08/11/00

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Andrews	Well-Co Oil Service Inc	L04953	Andrews	02	08/03/00
Baytown	Exxonmobil Chemical Company	L03335	Baytown	28	08/08/00
Plainview	Larry L Boedeker	L05054	Plainview	02	08/02/00

NEW LICENSE DENIED:

Location	Name	License #	City	Amend -ment #	Date of Action
Denton	Clear Sky MRI and Diagnostic Imaging Center	L5312	Denton		08/02/00

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the

license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200005924
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 2000

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Crystal Woman Foundation

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Crystal Woman Foundation (registrant-M00650) of Seabrook. A total penalty of $10,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code §289.230.

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, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200005925
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 2000

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Compliance Division - Admittance Policy For Section 8

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Dallas Housing Authority Board Room, 3939 Hampton Road, Dallas, Texas, 75212, on September 28, 2000, at 1:00 p.m. and at the "Department" Board Room, 507 Sabine Street, Suite 436, on September 29, 2000, at 1:00 p.m., with respect to the following Section 8 Task Force Committee's Recommendations (the "Task Force Recommendations"), as adopted by the Board of Directors of the Department on August 11, 2000, as follows:

INTRODUCTION

In June, 2000, the Texas Department of Housing and Community Affairs (TDHCA) appointed a Section 8 Task Force and charged it to develop a policy for expanding housing opportunities for Section 8 voucher and certificate holders in TDHCA assisted properties. During the work of the Task Force that directive was narrowed to concentrate on properties that receive assistance through the Low Income Housing Tax Credit (LIHTC) program. The Section 8 Task Force was comprised of diverse representatives covering all of the different aspects of the affordable housing community and met on June 2, 2000, July 7, 2000, and July 18, 2000, to consider and discuss the options and prepare its report. Two specific actions are proposed for TDHCA by the Task Force. First, it is recommended that TDCHA immediately approve a statement of policy relative to this issue. Secondly, it is recommended that TDHCA develop and propose a rule that incorporates specific restrictions and monitoring actions designed to ensure compliance with that policy.

STATEMENT OF POLICY

TDHCA's policy on Section 8 and LIHTC projects is as follows:

* Managers and owners of LIHTC properties are prohibited from having policies, practices, procedures and/or screening criteria which have the effect of excluding applicants because they have a Section 8 voucher or certificate.

* The verification of such an exclusionary practice on the part of the owner or the manager by TDHCA will be considered a violation and will result in the issuance of a Notice of Violation and, if appropriate, issuance of a Form 8823 to the Internal Revenue Service.

* Any violation of program requirements relative to this policy will also impact the Owner's ability to participate in future TDHCA programs.

LIHTC properties with Land Use Restrictive Agreement's (LURA's) executed after August 10, 1993, are governed by Section 42 of the Internal Revenue Code which clearly prohibits ". . . refusal to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder." For these properties, this policy is mandatory and compliance is expected.

For properties whose LURA's are dated prior to August 10, 1993, the requirements are not as strong but all owners and managers of LIHTC properties of this age are encouraged to obtain their own legal advice relative to compliance. Whatever the case, TDHCA intends to strongly encourage compliance with this policy by all LIHTC properties.

SPECIFIC MANAGEMENT REQUIREMENTS AND RESTRICTIONS

Management Plan

The management plan for the property must clearly state that Section 8 certificate or voucher holders are welcome and that they will be provided the same consideration for occupancy as any other applicant.

Use of Minimum Income Requirements

Any minimum monthly or annual income requirements that are applied to all applicants for occupancy may also be applied to Section 8 certificate or voucher holders with the following exceptions:

* The minimum income requirement for Section 8 certificate or voucher holders can only be applied to the portion of the rent the prospective tenant would pay. For instance, if the rent is $400 and the prospective tenant will pay $100, then the minimum income requirement can only be factored against the $100 the prospective tenant is responsible for paying.

* The minimum income required for Section 8 certificate or voucher holders cannot exceed 2.5 (two and one-half) times the portion of the rent the tenant will pay. Using the example from above the minimum income requirement could not exceed 2.5 times the $100 tenant paid portion of the rent. The annual minimum income requirement would then be $3,000 per year for this family ($100 per month times 2.5 factor times 12 months).

Employment Requirements

An LIHTC owner or manager who requires that applicants, other than elderly applicants or applicants with disabilities, be employed in order to qualify to lease a dwelling unit must apply that requirement in a manner that is consistent with the Fair Housing Act and with the TDHCA and LIHTC program requirements. Such a policy/procedure must not have the effect of excluding applicants with Section 8 vouchers or certificates.

Other Tenant Screening Criteria

As with employment requirements, any other screening criteria (credit history, prior landlord history, criminal history, etc.) must be applied in a manner that is consistent with the Fair Housing Act and with the TDHCA and LIHTC program requirements. Such a policy/procedure must not have the effect of excluding applicants with Section 8 vouchers or certificates.

MARKETING AND INFORMATION REQUIREMENTS

Cooperation and Communication with Administering Agencies

Annually, during the first quarter of each year, each LIHTC property in Texas will be required to communicate in writing with the local administering agencies for the Section 8 program. A current copy of this correspondence (sample letter enclosed) will required to be available during on-site reviews by TDHCA. This communication will include information on the unit characteristics and rents and will advise the administering agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner in accordance with this policy.

Advertising

The Fair Housing logo and Fair Housing posters are required to be posted in the office of every LIHTC property.

TDHCA Website

TDHCA will develop a new section on its web site that provides information on these requirements for LIHTC properties as well as a list of LIHTC projects.

On-Site Staff Information

Owners and managers are required to distribute instructions on these policies and procedures to their on-site staff within 60 days. It is strongly recommended that those polices and procedures be in writing so they can be available for review during site visits by the Compliance staff at TDCHA.

TDHCA COMPLIANCE MONITORING

Qualified Allocation Plan

In future Qualified Allocation Plans, the points that are allowed for notifying public housing authorities that the property will accept applications from those on the public housing waiting list will be eliminated. In support of this policy, a threshold requirement will be added that requires that all applicants notify the local administering agencies for Section 8 that the property will be available to Section 8 certificate or voucher holders.

Annual Owner's Certification

It is also recommended that language incorporated into the Annual Owner's Certification of Program Compliance form that annually requires the owner to verify their compliance with this policy and the Section 42 and LURA requirements relative to accepting Section 8 voucher or certificate holders.

Notice of Violation and Issuance of Form 8823

It is anticipated that the Compliance Division of TDHCA will monitor compliance with these requirements in their normal activities and through investigation of complaints. Identification of a policy or practice that unfairly excludes Section 8 voucher or certificate holders will be a finding and, if appropriate, will result in the issuance of a Form 8823.

Prohibition Against Further TDHCA Participation

Issuance of Form 8823's for violations of this policy and procedure can have significant bearing on consideration of future applications for participation in the various TDHCA programs.

Overall Compliance Monitoring

Vigorous and complete monitoring and enforcement of these polices and procedures are expected from the Compliance Division of TDHCA. In support of that effort, all types of efforts are to be undertaken (for example, following up on specific complaints, using testers to verify non-compliant behavior, etc.)

SUMMARY

In closing, these are several comments which are intended to provide guidance to future efforts in this area:

1. While the scope of the Section 8 Task Force was restricted to LIHTC properties, guidelines of this nature would be useful for all of the TDHCA housing programs with Section 8 occupancy provisions. Consideration should be given to implementation of similar requirements and restrictions as expeditiously as possible.

2. Significant discussion took place in the Section 8 Task Force meetings regarding the need for an revision to the LURA, that allows prospective residents who feel their rights may have been violated to recover legal fees. It was agreed that this issue is one for comment on the next version of the Qualified Allocation Plan. However, such a revision would allow for one more course of action in forcing hesitant owners into fulfilling their obligations to the LIHTC program.

While it is the belief of the Task Force that a majority of the operators and managers of LIHTC properties in Texas are already considering Section 8 voucher and certificate holders just as they do any other applicant, there was agreement that it was critical that any operators not providing fair treatment to Section 8 voucher or certificate holders must be redirected into a state of compliance relative to these issues.

The Task Force has not yet designed the form letter referenced in the above policy as MARKETING AND INFORMATION REQUIREMENTS which is proposed as an addition to the LIHTC application packet.

All interested parties are invited to attend such public hearing to express their views with respect to the Task Force Recommendations. Questions or requests for additional information may be directed to Suzanne Phillips at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3881.

Persons who intend to appear at the hearing and express their views are invited to contact Suzanne Phillips in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Suzanne Phillips prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

For further information on compliance, please visit out web site at http://www.tdhca.state.tx.us/comp.htm

Individuals who require child care to be provided at this meeting should contact Charlotte Cox at (512) 475-3292 at least five days before the meeting so that appropriate arrangements can be made.

TRD-200005940
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2000

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Collingham Park Apartments) Series 2000

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at Henington-Alief Regional Branch Library, 7979 South Kirkwood, Houston, Texas 77072, at 6:00 p.m. on Thursday, October 5, 2000, with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $12,750,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to TCR Bissonnet Limited Partnership (or a related person or affiliate thereof) (the "Borrower"), a limited partnership, to finance a portion of the acquisition, construction and equipping of a multifamily housing project (the "Project") described as follows: 250 unit multifamily residential rental development to be constructed on approximately 15 acres of land located on the north side of the 10700 block of Collingham, one block east of the intersection of Collingham and Wilcrest in Houston, Texas 77099. The Project will be initially owned and operated by TCR Bissonnet Limited Partnership (or a related person or affiliate thereof). The Project will be managed by Trammell Crow Residential Services.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

For further information on housing finance, please visit our web site at http://www.tdhca.state.tx.us/hf.htm.

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-200005938
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2000

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Request For Proposals For Tax Credit Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Division, is issuing a Request for Proposal (RFP) for outside counsel in connection with TDHCA's administration of its low income housing tax credit matters.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m. Central Standard Time September 29, 2000. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Lucille Spillar, Legal Assistant, General Counsel's office, at (512) 475-3726, 507 Sabine, Austin, Texas 78701, for a complete copy of the RFP. Communication with any member of the board of directors, the executive director, or TDHCA staff other than Betty J. Marks, General Counsel, or Ms. Spillar, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200005941
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2000

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Texas Bootstrap Loan Program Phase II

FY 2000 NOTICE OF FUNDING AVAILABILITY

I. Texas Bootstrap Loan Program

The Texas Department of Housing and Community Affairs (the Department) announces the availability of funds from the HOME Investment Partnerships Program. This initiative is designed to promote and enhance homeownership opportunities for very low income Texans providing loan funds to purchase or refinance real property on which to build new residential housing; construct new residential housing; or improve existing residential housing. The Department intends to make available $2.8 million to eligible applicants throughout the State of Texas. At least two-thirds of the dollar amount of loans made under this program must be made to borrowers whose property is located in a county that is eligible to receive financial assistance under Subchapter K, Chapter 17 or the Water Code. As of August 24, 1999, these counties include:

Brewster

Brooks

Cameron

Coleman

Cottle

Crosby

Culberson

Dimmit

Duval

El Paso

Frio

Hall

Hidalgo

Hudspeth

Jeff Davis

Jim Hogg

Jim Wells

King

Kinney

Kleberg

La Salle

Liberty

Marion

Maverick

Mitchell

Newton

Nolan

Panola

Presidio

Red River

Reeves

San Augustine

San Patricio

Starr

Terrell

Tyler

Uvalde

Val Verde

Ward

Webb

Willacy

Winkler

Zapata

Zavala

Applications will be reviewed and scored by Department staff and recommended for funding based on ranking and availability of funding.

II. Eligible Applicants

(as defined by sec. 2306.752 of the Texas Government Code)

(1) Colonia Self-Help Centers

(2) State Certified Nonprofit Organizations

III. Eligible Activities:

All of the eligible activities under this program require that an owner-builder provide at least 60% of the labor necessary to build the proposed housing or provide an amount of labor equivalent to the amount required to build the proposed housing by working through a state-certified owner-builder housing program. Eligible activities include:

(1) Purchase or refinance real property on which to build new residential housing;

(2) construct new residential housing; or

(3) improve existing residential housing.

IV. Application Request and Submission:

(a) Applications can be obtained by written request, or by contacting the Department's Office of Colonia Initiatives at the telephone number provided below. Applications are also available on the Department's website at www.tdhca.state.tx.us. Deadline for submission of applications will be 5:00 p.m. on Monday, October 16, 2000. Applications sent by facsimile will not be accepted. For additional information, please contact Maria I. Cazares with the Office of Colonia Initiatives at 1-800-462-4251 or by email at mcazares@tdhca.state.tx.us.

(b) Applications must be mailed or hand delivered to:

Texas Department of Housing & Community Affairs

OFFICE OF COLONIA INITIATIVES

P.O. Box 13941, Capitol Station

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite #800

Austin, Texas 78701

TRD-200005942
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 23, 2000

Texas Department of Insurance

Name Applications

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of INTEGRAL INSURANCE COMPANY to CATERPILLAR INSURANCE COMPANY, a foreign fire and casualty insurance company. The home office is in Jefferson City, Missouri.

Application to change the name of MISSION INSURANCE COMPANY OF TEXAS, INC. to TRIUMPHE CASUALTY COMPANY, a foreign fire and casualty insurance company. The home office is in Arlington, Texas.

Application to do business in the State of Texas by AGC LIFE INSURANCE COMPANY, a foreign life company. The home office is in Jefferson City, Missouri.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200005933
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 23, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual filing submitted by American Safety Casualty Insurance Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(l). The company is proposing to adopt a companion policy discount. The 15% discount provides a reduction in premium for commercial automobiles classified as light service vehicles and the general liability policy classified as Pest Control or Fumigating Services and both accounts written through the same insurer or the insurer's Affiliated Risk Retention Group. The discount is only applicable to premiums for liability and physical damage coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

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 Property & Casualty, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-200005934
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 23, 2000

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Notice of Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2458 on October 4, 2000 at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. 99-1363 dated October 1, 1999 and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability for Expected Loss Rates and Discount Ratios. Staff's petition (Ref. No. W-0800-21-I), was filed on August 23, 2000.

The petition requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 2001. The petition also requests that the table amending the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance Manual concerning the Expected Loss Rates and Discount Ratios be made effective for workers' compensation policies with an effective date on or after January 1, 2001.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60(d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1992 through 1996. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1993 through 1997. The staff's proposed classification relativities reflect changes in experience that occur over time, due to such things as technological advances and improvement in safety programs.

The indicated resulting relativities were balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities that have been balanced overall to the level of the current relativities to +25% and -25%. This would help to minimize possible rate shock due to large indicated changes in the relativities.

Modifications to the classification relativities require concurrent changes in the table of Expected Loss Rates and Discount Ratios. The table is contained in the Manual as part of the uniform experience rating plan. The current Table II of the Manual concerning Experience Loss Rates and Discount Ratios was adopted on October 1, 1999 and became effective on January 1, 2000. The current expected loss rates are essentially based on the level of losses used to experience rate a policy effective on July 1, 2000. Staff proposes an adjustment to reflect the change in classification relativities and to make the expected loss rates more reflective of the level of losses that would be used to experience rate policies that would be effective in 2001.

Staff proposes to cap changes in the new expected loss rates to +25% and -25%. This would help minimize possible premium shock, which could otherwise occur based solely on the changes in the expected loss rates.

Copies of the full text of the staff petition and the proposed revised schedule of classification relativities and the table of expected loss rates are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Angie Arizpe at (512) 322-4147 (refer to Ref. No. W-0800-21-I)

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

TRD-200005936

Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 23, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Access Healthsource Administrators, Inc., a domestic third party administrator. The home office is El Paso, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200005918
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 22, 2000

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Texas Department of Licensing and Regulation

Vacancies on Board of Boiler Rules

The Texas Department of Licensing and Regulation announces a vacancy on the Board of Boiler Rules established by Texas Health and Safety Code Annotated, Chapter 755 (Vernon 1999). The pertinent rules may be found in 16 TAC §65.65. The Board is created to advise the commissioner in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The board is composed of nine members appointed by the commissioner which include three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member who is a mechanical engineer and a member of the faculty of a recognized college of engineering in this state; and one member representing a labor union. This announcement is for the position of the mechanical engineer/faculty member of a college of engineering in Texas. Members serve staggered six-year terms.

Interested persons should request an application from the Texas Department of Licensing and Regulation by calling (512) 463-7348, FAX (512) 475-2872 or E-mail at caroline.jackson@license.state.tx.us. Applications must be returned to the Texas Department of Licensing and Regulation no later than September 25, 2000. Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200005875
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 21, 2000

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Vacancies on Service Contract Providers Advisory Board

The Texas Department of Licensing and Regulation announces vacancies on the Service Contract Providers Advisory Board established by Acts of the 76th Legislature, SB 1775 which created Texas Civil Statutes, Article 9034, Service Contract Regulatory Act. The Board is created to advise the commissioner in the adoption of rules and the enforcement and administration of the program and the commission in the setting of fees.

The advisory board is composed of six members appointed by the commissioner which include two members who are officers, directors, or employees of a provider of service contracts; two members who are officers, directors, or employees of a retail outlet or other entity located in this state that provides to consumers service contracts; one member who is an officer, director, or employee of an entity approved by the Texas Department of Insurance to sell reimbursement insurance policies; and one member who is a resident of this state who has, as a consumer, a service contract in force in this state at the time of the appointment. There are presently vacancies for one officer, director, or employee of a provider of service contracts and one resident of Texas who has, as a consumer, a service contract in force in Texas, issued by a registered service contract provider. Members serve a term of six years with terms expiring on February 1 of odd-numbered years.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-7348 or (512) 463-7357, FAX (512) 475-2872 or E-mail caroline.jackson@license.state.tx.us. Applications must be returned to the Department of Licensing and Regulation no later than September 25, 2000. Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200005874
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 21, 2000

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Texas Natural Resource Conservation Commission

Public Hearing Address Correction

The Texas Natural Resource Conservation Commission corrects the address of the Corpus Christi hearing regarding revisions to 30 TAC Chapters 101, 110, 114, 115, and 117, and the State Implementation Plan (SIP) as published in the August 25, 2000, issue of the *Texas Register*. The hearing will be held September 25, 2000, 2:00 p.m., Natural Resources Center, Suite 1003, 6300 Ocean Drive, Corpus Christi.

For further information on the proposed revisions, please contact Bill Jordan at (512) 239-2583. Copies of the proposed rules and SIP revisions can be obtained from the commission's Web Site at *http://www.tnrcc.state.tx.us/oprd/hgasip.html*.

TRD-200005872
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 21, 2000

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2474).

The selected consultant will conduct an Air Quality Awareness Campaign for the Dallas-Fort Worth region.

The consultant selected for this project is the North Texas Commission, P.O. Box 610246, DFW Airport, Texas. The maximum amount of this contract is $300,000. Work on this project began August 17, 2000, and all work will be completed in January 2001.

TRD-200005837
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 18, 2000

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Public Utility Commission of Texas

Notice of Application for Authority to Revise Fixed Fuel Factors and to Surcharge Fuel Under-Recoveries

Notice is given to the public of the filing of an application with the Public Utility Commission (commission) for authority to revise fixed fuel factors, surcharge fuel under- recoveries and for related good-cause waivers.

Docket Style and Number: Application of Southwestern Public Service Company for: (1) Authority to Revise its Fixed Fuel Factors; (2) Authority to Surcharge its Fuel Under-Recoveries; and (3) Related Good Cause Waivers. Docket Number 22810.

The Application: Southwestern Public Service Company (SPS) had originally filed, in Docket Number 22810, an application for an emergency revision of its fixed voltage level fuel factors pursuant to P.U.C. Substantive Rule §25.237(f) due to circumstances such as the substantial and unforeseeable increase in natural gas prices. Subsequently, in Docket Number 22902, SPS filed an application for authority to surcharge its fuel under-recoveries. On August 18, 2000, the commission consolidated SPS' applications, Dockets Number 22810 and 22902, requesting to revise its fuel factor and requesting authority to surcharge its fuel under-recoveries into Docket Number 22810. Docket Number 22810 was restyled to read: Application of Southwestern Public Service Company for 1) Authority to Revise its Fixed Fuel Factor; 2) Authority to Surcharge its Fuel Under-Recoveries; and 3) Related Good Cause Waivers. Consequently, Docket Number 22810 now includes SPS' request for authority to surcharge its actual fuel under-recovery, through the June 2000 billing cycle, of $26,429,502.06. SPS is also requesting the commission find that good cause exists for SPS to file its application out of time. All classes of SPS' Texas retail customers will be affected by the proposed surcharge, which will become effective upon the commission's approval and remain in effect until the May 2001 billing cycle. These changes will be subject to final review by the commission in the utility's next fuel reconciliation proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477 no later than September 7, 2000. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735- 2989.

TRD-200005902
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 15, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Optical Access Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22916 before the Public Utility Commission of Texas.

Applicant intends to provide ADSL, HDSL, SDSL, RADSL, VDSL, Optical Services, T1- Private Line, Switch 56 KBPS, Frame Relay, and Fractional T1 services.

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 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005834
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2000

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 16, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Phone Remedies, LLC for a Service Provider Certificate of Operating Authority, Docket Number 22925 before the Public Utility Commission of Texas.

Applicant intends to provide resold-only local exchange service.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by 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 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005883
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2000

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 17, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of eVulkan, Inc., doing business as beMANY! for a Service Provider Certificate of Operating Authority, Docket Number 22866 before the Public Utility Commission of Texas.

Applicant intends to provide local dial tone and a variety of other local telecommunications services, including, but not limited to, custom calling, directory assistance, local exchange service, intraLATA and interLATA switched and dedicated outbound interexchange services, calling card and debit card services.

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 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005884
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2000

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 21, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Florida Telephone Services, LLC for a Service Provider Certificate of Operating Authority, Docket Number 22938 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and residential and business prepaid local calling services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by GTE Southwest, Inc., United Telephone Company of Texas, Inc., and Central Telephone Company of Texas doing business as Sprint.

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 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005887
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2000

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 18, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Valor Telecommunications CLEC of Texas, LP. for a Service Provider Certificate of Operating Authority, Docket Number 22929 before the Public Utility Commission of Texas.

Applicant intends to provide a complete line of telecommunications services, including, but not limited to, dial tone access, custom calling, CLASS, and voice mail features, ADSL, ISDN, dial-up Internet service, and long distance services.

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 6, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005888
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2000

♦ ♦ ♦

Notice of Application for Transfer of Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for transfer of a certificate of convenience and necessity on August 21, 2000, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §37.154 (Vernon 1998).

Docket Style and Number: Application Of Cap Rock Electric Cooperative, Inc. To Amend Certificated Service Area Boundaries, Docket Number 22934.

The Application: Cap Rock Electric Cooperative, Inc. (Cap Rock) filed with the Public Utility Commission of Texas (commission) an application for approval of the consolidation of Cap Rock and McCulloch Electric Cooperative, Inc. (McCulloch). Ownership of McCulloch's assets has been transferred to Cap Rock. Cap Rock requests that McCulloch's Certificate of Convenience and Necessity Number 30114 be transferred to Cap Rock.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-713F6 or use Relay Texas (toll-free) (800) 735-2989.

TRD-200005930

Rhonda Dempsey
Rules Coordinator
Public Utility of Commission of Texas
Filed: August 23, 2000

♦ ♦ ♦

Public Notice of Intent to Appoint Pilot Implementation Working Group, Request for Comment, and Notice of Working Group Meeting

The Public Utility Commission of Texas (commission) proposes to appoint a pilot implementation working group, pursuant to P.U.C. Substantive Rule §25.431(j)(4) (relating to Retail Competition Pilot Projects), which states: "The commission will establish a pilot implementation working group to oversee the pilot projects. The commission or its designee, based upon a recommendation of the pilot implementation working group, may revise the operational requirements of the pilot projects in order to resolve technical problems encountered by market participants." Project Number 22834, *Implementation Activities Related to Retail Competition Pilot Projects Pursuant to PURA §39.104 and §39.405, and P.U.C. Substantive Rule §25.431*, has been established for this proceeding.

Composition of the working group. The commission recognizes that the issues to be considered by the working group are, by definition, not readily apparent at this time. It is anticipated, however, by the language of §25.431(j)(4) that such issues will be chiefly operational and technical in nature. Therefore, the commission proposes that the working group be comprised of individuals with expertise in these areas, rather than those with a policy-oriented background. The commission proposes that the working group be made up of a representative of each the following interests: (1) commission staff; (2) the Office of Public Utility Counsel; (3) the Electric Reliability Council of Texas (ERCOT) Independent System Operator (two representatives); (4) the Southwest Power Pool; (5) electric utilities operating within ERCOT; (6) electric utilities operating outside of ERCOT; (7) retail electric providers (REPs) serving residential and/or small commercial customers; (8) REPs serving commercial and/or industrial customers; (9) aggregators; (10) residential and small commercial customers; and (11) commercial and industrial customers.

Request for comment. The commission requests comment on its proposal to appoint a pilot implementation working group, including the structure, membership, and functions of the working group. This comment process will serve as the procedure for applying for membership to the working group. Interested parties are requested to align themselves among the 11 interests listed above, and to nominate a representative for membership in the working group. Nominations should include the individual nominee's name, contact information, and a brief description of the nominee's area of expertise. Nominations of alternates are also encouraged. The commission will make the final selection of members of the working group. Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within ten days of the date of publication of this notice. All responses should reference Project Number 22834.

Notice of Working Group Meeting. The pilot implementation working group appointed by the commission will hold its initial meeting at the commission's offices on Wednesday, September 27, 2000, at 9:00 a.m.

Questions concerning this notice should be referred to Connie Corona, Director, Policy Development Division, (512) 936-7212. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200005900
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2000

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Off Campus CentraNet Service Pursuant to P.U.C. Substantive Rule §26.215 on or after August 24, 2000, Docket Number 22912.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22912. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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.

TRD-200005832
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2000

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Studies for Texas 2000-2002 Digital Link Tariff DS3 Services Pursuant to P.U.C. Substantive Rule §26.215 on or after August 24, 2000, Docket Number 22914.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22914. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's 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.

TRD-200005833
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2000

♦ ♦ ♦

Public Notice of Workshop on Flat Rate Expanded Area Calling Between Laredo, Texas and Nuevo Laredo, Mexico

The Public Utility Commission of Texas (commission) will hold a workshop regarding a flat rate expanded area calling plan between Laredo, Texas and Nuevo Laredo, Mexico on Wednesday, September 13, 2000, at 1:30 p.m. in Hearing Room A, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21951, has been established for this proceeding. The purpose of the workshop is to discuss the scope of the project and to address questions and concerns of interested members of the industry and community.

Questions concerning the workshop or this notice should be referred to Alyssa N. Eacono, Network Analyst, Telecommunications Division at (512) 936-7381. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200005929
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2000

♦ ♦ ♦

Public Notice of Workshop Relating to Stranded Cost Recovery of Environmental Cleanup Costs

The Public Utility Commission (commission) anticipates conducting a workshop in conjunction with Project Number 21406, involving development of P.U.C. Substantive Rule §25.261 relating to Stranded Cost Recovery of Environmental Cleanup Costs. The purpose of the workshop will be to develop price projections to incorporate into determination of the cost of replacement generating capacity as defined in the rule. A workshop has been scheduled for 9:30 a.m. on Monday, September 11, 2000, in Room 1- 111, William B. Travis Building, 1701 North Congress, Austin, Texas 78701. Any changes in the scheduled date and time for the meeting will be posted on the commission's website.

The commission anticipates that proposed price projections will be posted by commission staff on the commission's website on or before September 1, 2000, to allow interested parties to review staff's proposal prior to the workshop. Staff will consider information received during the workshop and revise its proposed price projections as appropriate. The commission anticipates that after the workshop, revised proposed price projections will be posted on the commission's website for review and comment. Interested persons are advised to check the commission's website for details on how and when to submit written comments on the revised proposed price projections. The commission anticipates that the comment period on revised proposed price projections will be relatively short. Currently, the commission anticipates that it will consider approval of price projections at the September 21, 2000, open meeting.

The commission plans to consider adoption of P.U.C Substantive Rule §25.261 at the August 24, 2000, open meeting. A draft of the final rule and information regarding the status of the rule (*i.e.*, information regarding adoption of the rule and the anticipated effective date) can be found on the commission's website.

All references to the commission's website in this notice refer to www.puc.state.tx.us/rules/rulemake/21406/21406.cfm. Individuals who do not have Internet access may contact Brian Almon at (512) 936-7355 for information regarding the matters discussed in this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

200005901
Rhonda Dempsey
Rules Coordinator
Public Utiltiy Commission of Texas
Filed: August 22, 2000

♦ ♦ ♦

Texas Department of Transportation

Public Notice

Public Notice: Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site- **http://www.dot.state.tx.us** - click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or (800) 68- PILOT.

TRD-200005923
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 23, 2000

♦ ♦ ♦

Public Notice - Texas Transportation Plan Update

The Texas Department of Transportation (TxDOT) is initiating a millennium update of the Texas Transportation Plan. In accordance with Transportation Code, §201.601, the Texas Transportation Plan is a statewide program that will include projects such as

Highway construction and upgrades

Bridge improvements

Transit programs

Intermodal connections and coordination

The first round of statewide public meetings will be held October 2, 2000, through November 17, 2000, from 3:00 p.m. - 8:00 p.m. in the following cities:

10/2/00 **Houston/Galveston**: Magnolia Multiservice Center

10/3/00 **Weslaco**: Best Western Palm Aire

10/5/00 **Corpus Christi**: TxDOT Regional Training Center

10/16/00 **Lufkin**: City Civic Center

10/17/00 **Arlington**: Elzie Odum Recreation Center

10/19/00 **Tyler**: Regional Training and Development Center

10/23/00 **Austin**: Joe C. Thompson Conference Center

10/24/00 **San Antonio**: Public Library Auditorium

10/26/00 **Laredo**: TxDOT District Office Conference Room

10/30/00 **Lubbock**: International Center at Texas Tech

10/31/00 **Amarillo**: TxDOT District Conference Center

11/2/00 **El Paso**: El Paso Chamber of Commerce

11/13/00 **San Angelo**: Training Room

11/14/00 **Abilene**: Abilene Civic Center

Public input will help TxDOT update, develop, and refine this statewide plan. Citizens of Texas need to join TxDOT at the Public Meeting held in their area to express comments on the goals and objectives in this most important plan that will have a long ranging impact on your transportation options.

Call Michelle Conkle, TxDOT Transportation Planning and Programming Division, at (512) 486-5023 for further information.

TRD-200005922
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 23, 2000

♦ ♦ ♦

The University of Texas System

Request for Offers

The University of Texas System, UT TeleCampus (University) extends this invitation to qualified and experienced offerors interested in providing a Student Information System (SIS) as more specifically described in Request for Offers No. OITDE-2000-02 (RFO). The University's objective is to create an SIS that will serve the needs of the inter-institutional distance education student. This unique student population is not adequately served by the existing systems or processes. The proposed Student Information System will collect information from each of the existing component institution student information systems and thus create a "big picture" of the student's progress.

An award selection process and criteria for selection of a provider will be made using the competitive sealed offer process and the criteria more particularly described in the RFO. University reserves the right to award a contract for all or any portion of the SIS as more particularly described in the RFO; award multiple contracts; reject any and all offers; re-solicit offers; and temporarily or permanently abandon the procurement as deemed to be in the best interest of University. If University awards a contract, it will award the contract to the offeror whose offer is the most advantageous to University.

Interested parties may obtain a copy of the RFP by contacting Mr. Rob Robinson, Technology Manger-UT Telecampus, The University of Texas System (512) 499-4397, or email rrobinson@utsystem.edu.

Please note: To be eligible for consideration, an original and three copies of the responsive Offer must be received in the UT System office at 201 West Seventh Street, Ashbel Smith Hall, Room 418, Austin, Texas on or before 3:00 p.m. Central Daylight Time on Friday, September 15, 2000 (the Submittal Deadline). Late submitted Offers will be rejected.

TRD-200005937
Francie A. Frederick
Executive Secretary to the Board of Regents
The University of Texas System
Filed: August 23, 2000

♦ ♦ ♦

Texas Water Development Board

Eligible County List

Pursuant to 31 TAC §355.72(a), the Texas Water Development Board (the board), through its executive administrator, publishes the following list of Texas counties which are eligible to apply for financial assistance from the Economically Distressed Areas Program. These counties will continue to be eligible for such assistance until the next list is published which will be 60 days after the executive administrator of the board receives sufficiently reliable statistics to establish the statewide per capita income and unemployment rates for the previous three years, which is anticipated to be in November of 2001. Andrews County, Brewster County, Brooks County, Cameron County, Coleman County, Culberson County, Dawson County, Dimmit County, Duval County, El Paso County, Frio County, Garza County, Hall County, Hidalgo County, Hudspeth County, Jeff Davis County, Jim Hogg County, Jim Wells County, Kinney County, Kleberg County, La Salle County, Leon County, Liberty County, Marion County, Maverick County, Mitchell County, Newton County, Nolan County, Panola County, Pecos County, Presidio County, Reagan County, Red River County, Reeves County, San Augustine County, San Patricio County, Starr County, Terrell County, Tyler County, Upshur County, Uvalde County, Val Verde County, Ward County, Webb County, Willacy County, Winkler County, Zapata County, and Zavala County.

TRD-200005927
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: August 23, 2000

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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