TEXAS REGISTER

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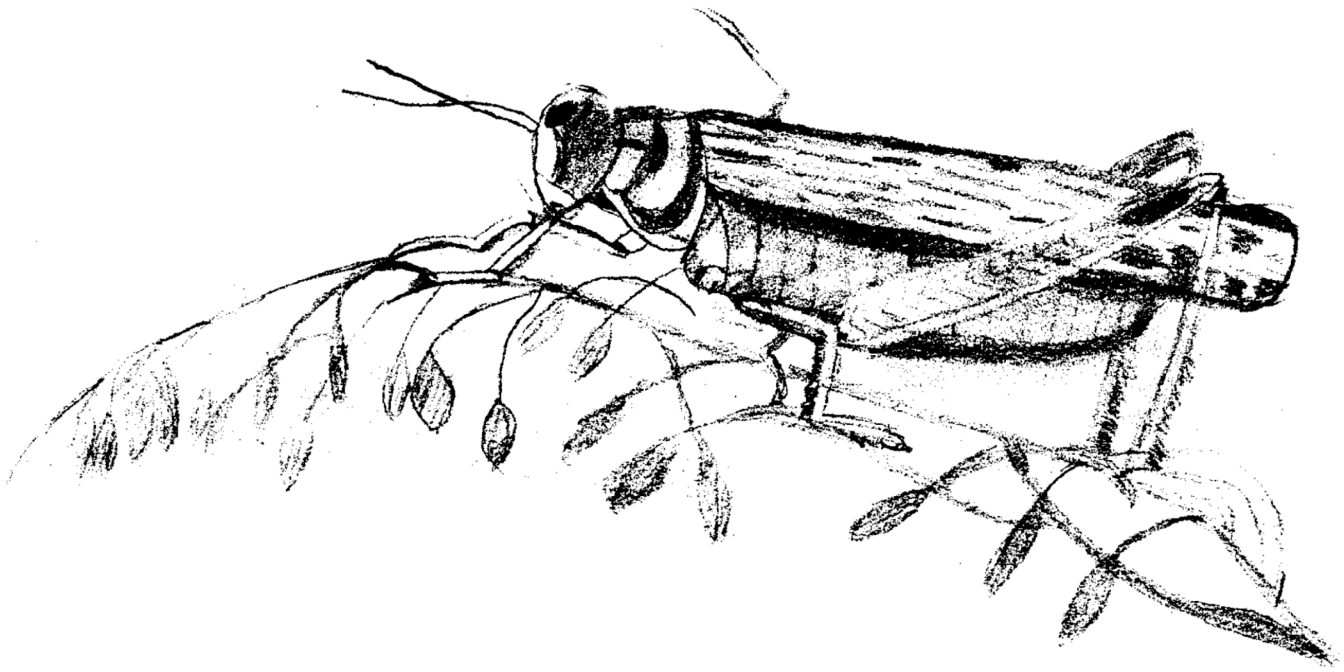

This month's front cover artwork:

Artist: *Trista Doss*
12th Grade
Blanket High School

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

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

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

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GOVERNOR

ATTORNEY GENERAL

PROPOSED RULES

TEXAS ETHICS COMMISSION

PUBLIC UTILITY COMMISSION OF TEXAS

TEXAS MOTOR VEHICLE BOARD

TEXAS STATE BOARD OF MEDICAL EXAMINERS

TEXAS STATE BOARD OF PLUMBING EXAMINERS

STRUCTURAL PEST CONTROL BOARD

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

TEXAS PARKS AND WILDLIFE DEPARTMENT

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

TEXAS COMMISSION ON FIRE PROTECTION

TEXAS DEPARTMENT OF HUMAN SERVICES

AUTOMOBILE THEFT PREVENTION AUTHORITY

WITHDRAWN RULES

GENERAL SERVICES COMMISSION

TEXAS MOTOR VEHICLE BOARD

ADOPTED RULES

Texas Department of Transportation

Texas Workers' Compensation Commission

THE GOVERNOR

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

Appointments

Appointments for February 6, 2002.

Appointed to the Texas State Technical College System Board of Regents for a term to expire on August 31, 2005, Don H. Elliott of Wharton (replacing Peterson Foster of Houston who resigned).

Appointed to the Texas State Technical College System Board of Regents for terms to expire on August 31, 2007, C. 'Connie' de la Garza of Harlingen (reappointed), Mike R. Northcutt, Sr. of Longview (replacing Thomas Whaley of Marshall whose term expired), Jerilyn K. Pfeifer of Abilene (reappointed).

Appointments for February 11, 2002.

Designated to the Texas Building and Procurement Commission as Presiding Officer for a term to expire on January 31, 2003, W. Thomas Beard, III of Alpine. Appointed pursuant to SB 311.

Appointed to the Texas Building and Procurement Commission for terms to expire on January 31, 2003, Richard Salwen of Austin, Noe Fernandez of McAllen. Appointed Pursuant to SB 311 77th Legislature.

Appointed to the Texas Building and Procurement Commission for a term to expire on January 31, 2005, W. Thomas Beard, III of Alpine. Appointed Pursuant to SB 311 77th Legislature.

Appointed to the Texas Building and Procurement Commission for a term to expire on January 31, 2007, Stuart S. Coleman of Brownwood. Appointed Pursuant to SB 311 77th Legislature.

Designated as Chair of the Quarter Dollar Coin Advisory Committee for a term at the pleasure of the Governor, Paula Carole Day of Fort Worth. Ms. Day will replace Robert Estrada of Dallas as Chair. Mr. Estrada will continue to serve on the committee.

Appointed to the Quarter Dollar Coin Advisory Committee for a term at the pleasure of the Governor, William H. Caudill of Houston (replacing Dealey Herndon who resigned).

Appointments for February 12, 2002.

Appointed to the Texas Water Development Board for a term to expire on December 31, 2005, Thomas Weir Labatt, III of San Antonio (replacing Kathleen Hartnett White of Valentine who resigned).

Appointed to the Texas Water Development Board for terms to expire on December 31, 2007, Dario Vidal Guerra, Jr. of Edinburg (replacing Noe Fernandez of McAllen whose term expired), E. G. Rod Pittman of Lufkin (replacing William Madden of Dallas whose term expired).

Appointments for February 13, 2002.

Appointed to the Texas Council on Workforce and Economic Competitiveness for a term to expire on September 1, 2005, Frank Acosta of Kingwood (replacing David Sampson of Arlington who resigned).

Appointed to the Texas Council on Workforce and Economic Competitiveness for terms to expire on September 1, 2007, Angela Blanchard of Houston (reappointed), Ann F. Hodge of Katy (reappointed), Harold Jenkins of Irving (replacing Wanda Rohm of San Antonio whose term expired), Lonnie R. Morgan of Arlington (replacing Joe Gunn of Austin whose term expired), John W. Wroten, Jr. of Fairview (reappointed).

Appointed to the Governor's Council on Science and Biotechnology Development, pursuant to Executive Order #RP-10, for terms at the pleasure of the Governor, E. Ashley Smith - Chair of Austin, Dr. Perry Adkisson of College Station, Dr. Jose Amador of Weslaco, Ann Armstrong of Kingsville, George Bayoud of Dallas, Chancellor R. D. Burck (ex-officio member) of Austin, Tom Caskey (ex-officio member) of Houston, Dr. Francisco Cigarroa of San Antonio, Dr. Larry Faulkner of Austin, Dr. Ralph Feigin of Houston, Peter Felix of El Paso, Dr. Ronald Garvey of Tyler, Steve Gens of Amarillo, Dr. Robert Gracy of Fort Worth, Chancellor Howard Graves (ex-officio member) of College Station, Chancellor Alfred Hurley (ex-officio member) of Denton, Dr. Mae Jemison of Houston, Dee Kelly, Jr. of Fort Worth, Tom Kowalski of Austin, Bruce LaBoon of Houston, Tom Loeffler of San Antonio, Dr. John Mendelsohn of Houston, Tom Mullins of Tyler, David Nance of Austin, Dr. Diana Natalicio of El Paso, Jack Nelson of Santa Rosa, Pike Powers of Austin, Dr. Mario Ramirez of McAllen, Bob Reeves of Center, Dr. Craig Rosenfeld of Dallas, Richard Seline (ex-officio member) of Washington, D.C., Dr. Richard Smalley of Houston, Chancellor Arthur Smith (ex-officio member) of Houston, Dr. David Smith (at large member) (ex-officio member) of Lubbock, Charles Tate of Dallas, Chancellor Lamar G. Urbanovsky (ex-officio member) of Austin, Dr. Kern Wildenthal of Dallas, Pam Willeford of Austin, Dr. Jim Willerson of Houston, Gary Woods of San Antonio, Terry Young of College Station.

Appointed to the University of North Texas Board of Regents for terms to expire May 22, 2005, Charles 'Chuck' Beatty of Waxahachie (replacing Roy Gene Evans of Dallas who resigned), Claude Daniel Smith, Jr. of Plano (replacing Richard Knight of Fort Worth who resigned).

Appointed to the Texas Youth Commission for a term to expire on August 31, 2005, Stephen Kurt Fryar of Brownwood (replacing Cathleen Herasimchuk of Houston who resigned).

Appointed to the Texas Youth Commission for terms to expire August 31, 2007, Pedro C. Alfaro of Baytown (reappointed), Patsy Lou Reed Guest of Duncanville (replacing Lisa Teschner of Dallas whose term expired).

Rick Perry, Governor

TRD-200200995 ♦ ♦ ♦

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-0458

The Honorable Kim Brimer, Chair, House Committee on Business & Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Constitutionality of a ban on testimonials by health care professionals (RQ-0411-JC)

S U M M A R Y

The United States Supreme Court has held that the government may freely regulate commercial speech that concerns unlawful activity or is misleading, but that commercial speech that falls into neither of those categories may be regulated only if the government satisfies a three prong test: (1) the government has a substantial interest in regulating the speech; (2) the restriction directly and materially advances that interest; and (3) the regulation is narrowly drawn. Because section 101.201(b)(4) of the Texas Occupations Code imposes an absolute ban on the use of testimonials regarding health care professionals, a court would probably find that it fails to satisfy the third prong of this test and, therefore, contravenes the First Amendment to the United States Constitution.

Opinion No. JC-0459

The Honorable Bruce Isaacks, Denton County Criminal District Attorney, 1450 East McKinney, Suite 3100, P.O. Box 2850, Denton, Texas 76202

Re: County's and school district's obligations vis-a-vis a juvenile justice alternative education program, and related questions (RQ-0420-JC)

S U M M A R Y

Outside of its responsibility to provide some funding to the juvenile board and to review that portion of the juvenile board's budget funded with county monies, a county or a commissioners court is not statutorily responsible for any aspect of the development or operation of a juvenile justice alternative education program (JJAEP). Because the juvenile board receives some county funds, the county may have corresponding obligations or liabilities.

A county has no authority to determine which expulsions that are discretionary under section 37.007 of the Education Code will be subject to placement in the JJAEP. See Tex. Educ. Code Ann. § 37.007(b), (c), (e), (f) (Vernon Supp. 2002). A school district's authority to determine which discretionary expulsions will be subject to placement in a JJAEP stems from its duty to negotiate with the juvenile board an annual memorandum of understanding. See id. § 37.011(k), (l). Conversely, the juvenile board's authority to determine which categories of conduct will be subject to placement in the JJAEP is subject to negotiation with the school district. The eligibility criteria set in the memorandum of understanding may be based upon classifications of conduct only.

A school district is not obligated to fund the construction of JJAEP facilities.

A juvenile board may purchase real estate for JJAEP purposes, but a juvenile board may not accept contributed real estate for JJAEP purposes unless the legislature has expressly authorized it to do so.

Opinion No. JC-0460

The Honorable Tony Goolsby, Chair, Committee on House Administration, Texas House of Representatives, P. O. Box 2910, Austin, Texas 78768-2910

Re: Authority of a home-rule city to create a civil offense for the disregard of a traffic control signal and to use automated enforcement systems for traffic control (RQ-0426-JC)

S U M M A R Y

Absent specific legislative authorization, a home-rule municipality such as the City of Richardson may not adopt an ordinance that imposes a civil penalty for violation of section 544.007(d) of the Transportation Code, which makes the running of red light a crime. The city is not prohibited from adopting an ordinance authorizing the use of automated enforcement equipment to identify criminal red-light violations at roadway intersections.

Opinion No. JC-0461

Ms. Karen F. Hale, Commissioner, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711-2668

Re: Whether a federally-funded state protective and advocacy system for persons with mental illness or developmental disabilities may have

access to a person and his or her records over the objection of the person's guardian (RQ-0427-JC)

S U M M A R Y

Federally-funded state protection and advocacy systems for persons with mental illness or developmental disabilities are authorized, in accordance with federal law, to have access to such persons and their records under certain circumstances and in accordance with the procedures prescribed by federal law, even if the person's legal guardian objects to such access.

Opinion No. JC-0462

The Honorable Tom Ramsay, Chair, County Affairs Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910
Re: Effect on a constable's duties when his precinct is abolished by redistricting (RQ-0432-JC)

S U M M A R Y

Pursuant to article V, section 18(c) of the Texas Constitution, a constable will serve out his term of office in the precinct in which he resides when the precinct to which he was elected was abolished by a change of boundaries, even though his continued service temporarily results in extra constables serving in a precinct. The legal duties and powers of a constable are not changed by the abolition of the precinct to which he was elected through the redrawing of precinct boundaries. The commissioners court continues to set the constable's salary and expenses and to approve the appointment of his deputies as it did before the precinct boundaries were redrawn.

Opinion No. JC-0463

The Honorable Dustanna Rabe Hopkins, County Attorney, 110 Main Street, Sulphur Springs, Texas 75482

Re: Disposition of funds previously accumulated under pretrial diversion agreements (RQ-0437-JC)

S U M M A R Y

Unauthorized accumulated "pretrial diversion fees" and the interest earned on the fees must be returned to the individuals who paid those fees. Unclaimed fees and interest earnings may become abandoned property that must be reported and delivered to the Comptroller of Public Accounts pursuant to chapter 74 of the Property Code.

Opinion No. JC-0464

Mr. Jeff Moseley, Executive Director, Texas Department of Economic Development, P.O. Box 12728, Austin, Texas 78711-2728

Re: Whether article III, section 19 of the Texas Constitution requires a Texas Department of Economic Development governing board member to resign from office in order to run for the Texas Legislature (RQ-0457-JC)

S U M M A R Y

Because a member of the Texas Department of Economic Development governing board does not hold a "lucrative" office within the meaning of article III, section 19 of the Texas Constitution, that constitutional provision is not relevant to a board member's eligibility to run for legislative office or to serve as a legislator. Article III, section 19 does not require a board member to resign from office in order to run for legislative office and would not affect a member's eligibility to serve should he or she be elected to office. However, article XVI, section 40(d) of the Texas Constitution prohibits a state legislator from holding an unpaid state office and would preclude a person from serving as both a member of the Department of Economic Development governing board and as a legislator.

For further information, please contact the Opinion Committee at (512) 463-2110 or access their website at www.oag.state.texas.us .

TRD-200201030
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 20, 2002

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Request for Opinions

RQ-0505

Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration, 205 West 14th Street, Suite 600 Austin, Texas 78711-2066

Re: Whether subsections 834.102(b) and 839.102(b), Texas Government Code, apply to visiting judges who retired prior to January 1, 2002 (Request No. 0505-JC)

Briefs requested by March 13, 2002

RQ-0506

Mr. Jim Nelson, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Re: Whether federal law overrides section 611.0045, Health and Safety Code, which provides that a mental health professional, including a public school counselor, may deny to a parent or guardian a school record whose release the counselor determines would be harmful to the student (Request No. 0506-JC)

Briefs requested by March 13, 2002

RQ-0507

The Honorable Juan J. Hinojosa, Chair, Criminal Jurisprudence Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Application of section 1704.302, Occupations Code, to an employee of a bail bond business when the business is purchased by another person (Request No. 0507-JC)

Briefs requested by March 13, 2002

RQ-0508

The Honorable Ken Armbrister, Chair, Criminal Justice Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether an accounting firm may include owners who are not certified public accountants (Request No. 0508-JC)

Briefs requested by March 14, 2002

For further information, please call the Opinion Committee at 512/ 463-2110 or access the website at www.oag.state.tx.us.

TRD-200201031
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: February 20, 2002

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.31

The Texas Ethics Commission proposes new 1 T.A.C. Chapter 20, Subchapter A, §20.31, concerning the use of political contributions to make a contribution to a speaker candidate. The proposed rule clarifies Ethics Advisory Opinion No. 436 (2001), in which the Ethics Commission determined that a member of the Texas Legislature may not use political contributions to contribute to a speaker candidate unless the member is able to demonstrate that the member obtained the funds from a source that is permitted to make contributions to a speaker candidate. Impermissible sources include political committees and elected officers and employees of the executive or judicial branch of state government. The proposed rule would require an individual who wishes to use political contributions to make a speaker candidate contribution to set up an account in a financial institution and to notify the Ethics Commission of that account. The account may not contain contributions from sources that are prohibited from contributing to a speaker candidate. Furthermore, any contribution to a speaker candidate from political funds must be made from that account. Finally, the contribution to the speaker candidate must be reported on the campaign finance report covering the period in which the contribution is made and must specify that the purpose is to make a contribution for an identified speaker candidate's campaign.

Karen Lundquist, General Counsel, has determined that for each year of the first five years the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the new rule as proposed.

Ms. Lundquist also has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarification of the law regulating contributions to speaker candidates in instances in which the contribution is made from political contributions.

Ms. Lundquist has also determined there will be no direct adverse effect on small businesses or micro-businesses because this rule does not apply to single businesses.

Ms. Lundquist has further determined that the economic costs to individuals required to comply with this rule will be those costs associated with establishing and maintaining an account in a financial institution.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new rule is proposed under Government Code, Chapter 571, Section 571.062, which provides authorization for the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §20.31, affects Subchapter B. Candidate for Speaker: Campaign Finance, Chapter 302, Government Code, and Chapter 254, Election Code.

§20.31. Use of Political Contributions for Contributions to Speaker Candidate.

(a) An individual who has accepted political contributions may not use political contributions to make a contribution to a speaker candidate for use in the speaker candidate's campaign unless:

(1) the political contributions from which the speaker candidate contribution will be made have been deposited in an account in

a financial institution and the speaker candidate contribution is made from funds in that account;

(2) the account was opened in the name of the individual who accepted the political contributions and who will be making the contribution to the speaker candidate;

(3) the account contains no funds obtained from a source that is prohibited from making a contribution to a speaker candidate under Chapter 302, Government Code; and

(4) the individual has filed an affidavit as described by subsection (b) before the contribution to the speaker candidate is made.

(b) The affidavit required by subsection (a) must be filed with the commission on a form prescribed by the commission and must provide the individual's name, address, and telephone number, and the name and address of the financial institution and the number of the account in which the political contributions have been deposited.

(c) An individual who uses political contributions to make a contribution to a speaker candidate for use in the speaker candidate's campaign must specify on the campaign finance report filed under Title 15, Election Code, that the purpose of the expenditure is to make a contribution for an identified speaker candidate's campaign. The expenditure must be reported on the campaign finance report covering the period during which the expenditure was made. An individual's failure to comply with this subsection may not be cured by filing a corrected report after the report deadline has passed.

(d) In this section:

(1) "Financial institution" means a bank, savings and loan association, savings bank, or credit union.

(2) "Speaker candidate" has the meaning assigned by Section 302.011, Government Code.

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 February 15, 2002.

TRD-200200989
Tom Harrison
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 463-5787

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §26.435

The Public Utility Commission of Texas (commission) proposes new §26.435, relating to Cost Recovery Methods for 9-1-1 Dedicated Transport. The proposed new rule will ensure consistency and uniformity of cost recovery for dedicated transport for 9-1-1. Project Number 24305 is assigned to this proceeding.

John Mason, Director, Legal Division-Telecommunications and James Kelsaw, Network Analyst, Telecommunications Industry Analysis, have determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Mason and Mr. Kelsaw have determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing the section will be enhancement of 9-1-1 service quality by requiring uniform cost recovery methods for all certificated telecommunications utilities (CTUs). 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. Mason and Mr. Kelsaw have also determined that for each year of the first five years the proposed rule 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 requested pursuant to Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, April 25, 2002 at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

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. Comments should be organized in a manner consistent with the organization of the proposed rule(s). All comments should refer to Project Number 24305. 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. In addition, the commission requests specific comments on the following questions:

1. Should the costs for 9-1-1 dedicated transport be apportioned equally between CTUs originating the 9-1-1 call and the 9-1-1 network service provider, as defined in §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers)? In your response, please compare and contrast possible network arrangements (e.g. incumbent local exchange company (ILEC) to ILEC vs. competitive local exchange company (CLEC) to ILEC).

2. Is there a more appropriate allocation method to apportion costs than the method proposed in (d)(1)? If so, what?

3. Does the proposed rule adequately address CTUs' concerns regarding alleged discriminatory rates that are charged by the applicable 9-1-1 network service provider, as defined in §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers)? Please explain fully.

4. If the proposed rule does not adequately address CTUs' concerns regarding alleged discriminatory rates, is the following language appropriate: "A 9-1-1 network service provider as defined in §26.433(b) of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) that provides transmission facilities from the point of interconnection with a CTU to the 9-1-1 selective router shall charge the CTU an amount not to exceed the pro rata share of the amount the CTU is entitled to recover from the 9-1-1 entity under paragraph (1) of this subsection."

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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 §58.051 which requires PURA Chapter 58 electing companies to offer access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service; §60.001 which requires the commission to ensure that the rates and rules of an incumbent local exchange company are not unreasonably preferential, prejudicial, or discriminatory and are equitably and consistently applied; §60.122 which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; and §60.124 which requires each telecommunications provider to maintain interoperable networks.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 58.051, 60.001, 60.122, and 60.124.

§26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.

(a) Purpose. The purpose of this section is to establish uniform cost recovery methods for dedicated trunks used in the provision of 9-1-1 service to end users by certificated telecommunications utilities (CTUs).

(b) Application. This section applies to all CTUs providing local exchange service.

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

(1) 9-1-1 entity--A regional planning commission as defined in Texas Health & Safety Code Annotated §771.001(10) and an emergency communication district as defined in the Texas Health & Safety Code Annotated §771.001(3).

(2) 9-1-1 Service Agreement--The contract addressing the 9-1-1 service arrangement(s) for the relevant local area that the 9-1-1 entity and the CTU shall negotiate and execute.

(3) Dedicated trunk--A 9-1-1 digital signal trunk that originates at a CTU switching office or point of presence and terminates at a 9-1-1 selective router on a port termination, regardless of the type of application (with a presumption for the use of the most up-to-date industry standard application, where technically feasible, unless otherwise specified in the 9- 1-1 Service Agreement), and as described to the CTU by the applicable 9- 1-1 entity in its service arrangement requirements in each applicable rate center requiring termination to a 9-1-1 selective router. 9-1-1 dedicated trunks shall be assigned to 9-1-1 transmission facilities. Each CTU shall be responsible for providing such 9-1-1 transmission facilities from the CTU switching office or point of presence to the 9-1-1 selective router.

(4) Service arrangement--Each particular arrangement for 9-1-1 emergency service specified by the 9-1-1 entity for the relevant rate center(s) within its jurisdictional area.

(d) Reimbursable costs.

(1) Subject to the applicable law regarding payments by the 9-1-1 entity, the 9-1- 1 entity shall reimburse a CTU a maximum nonrecurring rate of $165 and recurring rate of $39 per month as the total compensation for each dedicated trunk and any associated dedicated transmission facilities, unless:

(A) the CTU provides evidence to the commission that based upon certain technology deployment a different rate should apply; and

(B) after appropriate review, the commission approves such rate as requested by the CTU.

(2) The number of dedicated trunks needed for 9-1-1 purposes shall be determined by the CTU following industry standards to provide a grade of service of P.01 or greater, but the minimum number of dedicated trunks to each 9-1-1 selective router per service arrangement shall not be less than two.

(3) As a prerequisite to receiving compensation for more than the minimum number of dedicated trunks required to meet the P.01 grade of service, the CTU must provide to the 9-1-1 entity, at least 30 days prior to seeking additional compensation, copies of traffic studies, performed using measured call volumes on the individual trunk group, establishing that more than the minimum number of dedicated trunks required to meet the P.01 grade of service are necessary.

(4) The traffic study or summary provided in response to paragraph (3) of this subsection shall be provided to the 9-1-1 entity at no cost. Any other traffic studies to evaluate current network performance will be provided to the 9-1-1 entity upon request, and the CTU shall be compensated by the 9-1-1 entity on a time and materials basis at rates that do not exceed the tariff rates approved as reasonable by the commission for the dominant CTU in the rate center.

(5) Only the CTU originating the dedicated trunk from the switching office or point of presence to the 9-1-1 selective router can submit charges to the 9-1-1 entity for the maximum reimbursement required in paragraph (1) of this subsection.

(6) Where the same dedicated trunks are permitted by the relevant service arrangements to serve areas administered by multiple 9-1-1 entities, a CTU shall contact the 9-1-1 entity serving the largest number of access lines for the area served by the CTU with those dedicated trunks and there shall be a rebuttable presumption that the 9-1-1 entity serving the largest number of access lines is the appropriate 9-1-1 entity to receive the billings for these dedicated trunks. The 9-1-1 entity that is responsible for receiving the billings for dedicated trunks pursuant to this subsection, may seek reimbursement of such expense from other 9-1-1 entities within the affected rate center.

(7) CTUs that provide 9-1-1 transmission facilities to other CTUs shall charge no more than the actual costs to provide such facilities.

(8) The 9-1-1 network services provider as defined in §26.433(b) of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) shall charge nondiscriminatory rates for all services provided to CTUs.

(e) Reimbursement prerequisites. A CTU must comply with each of the following prerequisites before the CTU can obtain reimbursement from the 9-1-1 entity for dedicated trunks:

(1) Before the CTU initiates the provision of local exchange service in those areas in which the 9-1-1 entity provides 9-1-1 service, the CTU shall execute the 9-1-1 Service Agreement.

(2) The CTU shall provide verification to the applicable 9-1-1 entity that it is complying with all requirements of §26.433 of this title, including, but not limited to, §26.433(e)(2) of this title, requiring "a designated contact person to be available at all times to work with the applicable" 9-1-1 entity.

(3) A CTU that resells its local exchange service to any CTU that, in turn, provides the resold local exchange service to end users, shall demonstrate to the 9-1-1 entity that the CTU initially notified its reselling CTUs:

(A) that it does not remit the required 9-1-1 emergency service fees on behalf of reselling CTUs; and

(B) that, subject to a confidentiality agreement with the 9-1-1 entity, it will release reselling CTUs wholesale billing records to 9-1-1 entities for quality measurement purposes, including, but not limited to, auditing a reselling CTU's collection and remittance of 9-1-1 emergency service fees in accordance with applicable law.

(4) A CTU that provides resold local exchange service to end users must execute a separate service agreement with each 9-1-1 entity and remit the required 9-1-1 emergency service fee to the 9-1-1 entity pursuant to such service agreement.

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 February 13, 2002.

TRD-200200916
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 936-7208

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PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.3, §103.15

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §103.3, Amended License. The Board also proposes new rule §103.15, Exemption of Certain Vehicles from Definition of Motor Vehicle. The Board proposes the amendments and the new rule pursuant to Section 2001.021 of the Texas Government Code, Administrative Procedure Act, by which an interested party may petition a state agency to initiate a rulemaking proceeding.

The Texas Automobile Dealers Association (TADA) filed a petition requesting that the Board publish amendments to §103.3, proposing the addition of subsections (d) and (e). As proposed, §103.3(d) would permit a franchised motor vehicle dealer who changes or converts its business entity from one form to another to do business as the new entity under the terms of the prior franchise agreement until and unless the parties mutually elect to replace that agreement.

Furthermore, TADA has also requested the Board to publish proposed §103.3(e), allowing a franchised dealer who converts its legal entity from one form to another to file an amendment to its current license to reflect the entity change. The proposed amendment will clarify that a franchised dealer who converts its business form from one legal entity to another can amend the existing license, while a franchised dealer who changes its business entity using a method other than conversion must still file a new application in the successor entity's name.

TADA suggests that adoption of the proposed amendments to §103.3 will benefit the public over the first five years it is in effect by preventing manufacturers or distributors from using a dealership's change of corporate form as a mechanism to require that dealer to sign a new franchise agreement with less favorable terms. Additionally, dealers seeking to convert their business entities would be able to save time and money by avoiding the process involved in reapplying for a new license. The Motor Vehicle Board staff takes no position on the proposed amendments to §103.3.

Kawasaki Motor Corporation (Kawasaki) has also filed a petition requesting that the Board publish proposed new rule §103.15. The purpose of proposed §103.15 is to declare that the definition of motor vehicle does not include utility vehicles that are not regularly titled and not intended for use on public streets. Kawasaki requests the promulgation of this rule as a means to clarify that its Kawasaki Mule utility vehicle, and similar products, were not intended to be regulated as motor vehicles under the Texas Motor Vehicle Commission Code.

In its petition, Kawasaki argues that a fair and reasonable interpretation of the numerous definitions of "motor vehicle" found in the Transportation Code would allow utility vehicles like the Kawasaki Mule to be exempt from the definition of "titled vehicle," and thereby escape regulation under the Texas Motor Vehicle Commission Code. Under the Texas Motor Vehicle Commission Code §1.03(25)(B), the definition of motor vehicle includes titled vehicles that are not manufactured for street use. However, Kawasaki challenges the idea that its utility vehicle could fall within the parameters of this definition. According to its own research, Kawasaki has determined that its utility vehicle is treated by the Texas Department of Transportation, Vehicle Title and Registration Division, in the same manner as a golf cart.

Under §502.284 of the Transportation Code, a golf cart must be titled as a slow-moving vehicle if operated on the public streets, unless it adheres to certain specific conditions. Kawasaki maintains that, although its utility vehicle occasionally has been registered as a slow-moving vehicle operated on public streets, the vehicle was not manufactured to be operated on public streets or highways. Therefore, it should not be included in the definition of motor vehicle. Kawasaki further distinguishes this utility vehicle from other off-road vehicles required to be titled in Texas, such as ATVs, by emphasizing the fact that the Mule does not have a saddle-type seat that allows it to be ridden like a motorcycle. Also, it asserts in its petition that the Mule does not meet basic safety requirements for street or highway use.

Since 1999, the Motor Vehicle Board staff has interpreted the definition of "titled vehicle" under the Texas Motor Vehicle Commission Code to include utility vehicles. As a consequence, retail outlets of these vehicles are considered subject to regulation under the Code and are required to maintain franchised dealer

licenses to sell utility vehicles. Kawasaki asserts that many retailers who sell utility vehicles are not motor vehicle dealers, but instead retailers of general products or farm implements. As such, it is burdensome for these retail stores to go to the added expense of applying for franchised motor vehicle dealer licenses. Furthermore, Kawasaki claims that the regulation is not enforced uniformly.

Kawasaki represents that the proposed new §103.15 will benefit the public over the first five years it is in effect by reducing the extent of regulation, and the expense to utility vehicle retailers who are not otherwise qualified or required to maintain franchised dealer licenses.

Brett Bray, Director, Motor Vehicle Board, has determined that for 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.

Mr. Bray anticipates that there will be some indeterminate economic savings to persons currently subject to regulation under the Texas Motor Vehicle Commission Code. Mr. Bray also certifies that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

The Board requests comments from any interested person. Comments (16 copies) may be submitted to Brett Bray, Director, Motor Vehicle Board, Texas Department of Transportation, P.O. Box 2293, Austin, Texas, 78768, (512) 416-4910. The Motor Vehicle Board will consider adoption of the proposals at its meeting on April 25, 2002. The deadline for receipt of comments on the proposed amendments and new rule is 5:00 p.m. on April 5, 2002.

The amendments and new rule are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the Agency.

Texas Motor Vehicle Commission Code §§1.03 and 4.01 are affected by the proposed amendments and the proposed new rule.

§103.3. Amended License.

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

(d) If a licensed new motor vehicle dealer changes or converts from one type of business entity to another, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an application. The franchise agreement on file with the Board prior to the change or conversion of the dealer's business entity applies to the successor entity until the parties agree to replace the franchise agreement.

(e) If a dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an application to amend the license is necessary to be filed with the Board. The franchise agreement on file with the Board continues to apply to the converted entity. If the entity change is accomplished by any means other than conversion, a new application is required, subject to subsection (d) of this section.

§103.15. Exemption of Certain Vehicles from Definition of Motor Vehicle.

Under Texas Motor Vehicle Commission Code §1.03(25)(B), the Board construes the term "titled vehicle" to mean those types of vehicles that are required to be registered and titled by the State for off-road use, including off-road motorcycles and all-terrain vehicles. Vehicles such as utility vehicles that are not intended for use on public streets and are only registered and titled occasionally on an individual basis for limited or restricted use on public streets as slow-moving vehicles or golf carts will not be construed by the Board to be "titled vehicles" or "motor vehicles" under Texas Motor Vehicle Commission Code §1.03(25)(B).

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

Filed with the Office of the Secretary of State on February 15, 2002.

TRD-200200978
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: April 25, 2002
For further information, please call: (512) 416-4899

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CHAPTER 105. ADVERTISING

16 TAC §105.10

The Texas Motor Vehicle Board proposes amendments to §105.10(a), 105.10(c)(1), 105.10(c)(2) and 105.10(c)(3). The rules provide guidelines for truthful and accurate practices in the advertising of motor vehicles. The previously published proposed amendments to §105.10(a), 105.10(c)(1), 105.10(c)(2), and 105.10(c)(3) in the November 9, 2001, issue of the *Texas Register* (26 TexReg 8969) are withdrawn and simultaneously republished for consideration with changes to those previously published concerning §105.10(a).

In section 105.10(a) the word "a" is replaced with the word "the highest" to provide greater clarity. The proposed amendment to §105.10(c)(2), Figure: 16 TAC 105.10(c)(2), clarifies the example of acceptable dealer price advertising of rebate incentives. It shows that the rebate must be subtracted from the advertised price to depict the ultimate sales price in an advertisement. Amendments to 105.10(c)(1)and 105.10(c)(3) correct typographical errors in previous publications.

The purpose of proposing amendments to §105.10(a) is to provide needed clarification and definition, and address the issue of bait and switch tactics utilized by some dealerships, that is, advertising one price, but then making higher offers to consumers that respond to the advertisement. As written, the rule lends itself to such a practice. Amending the rule to refer to "the highest" price instead of "a" price, makes the language more definitive.

Section 105.6 of the Board's Advertising Rules states that "All advertised statements shall be accurate, clear, and conspicuous." The current language of §105.10(a) with the language "a" price, does not meet that standard.

It has been suggested that adopting any language other than "a" price would require dealers to sell only at the advertised price and not allow consumers an opportunity to negotiate a lower-than-advertised price. The converse to that position is that there is no rule preventing consumers or dealers from negotiating a transaction at a price lower than advertised. On the other hand, a consumer is not going to negotiate upward from the advertised price and the dealer might find it economically unsound to drop the price lower than already advertised. The primary purpose of advertising is to draw consumers to the dealership. To do so and

remain competitive, the dealership is likely to advertise its lowest available prices.

Regarding the situation in which a consumer trades in a vehicle owing more than the vehicle is worth, a dealer is not allowed under the Finance Code to alter the cash price of the vehicle. Negative equity may be itemized separately in a retail installment contract, but it cannot be added to the cash price. Thus, even in a situation where the consumer owes money on a trade-in, the advertised price must remain definite for the benefit of the consumer.

Another suggestion to address this issue is to amend the pertinent language in subsection (a) to state, "When featuring an advertised sale price of a new or used motor vehicle, the dealer must be willing to sell the vehicle for such advertised price to any retail buyer. The advertised sale price shall be the price before the addition or subtraction of any other negotiated items such as additional products or services, as well as the trade-in value, or any special rebates only available to a selected portion of the public." Other suggested language is, "When advertising a sales price of a new or used motor vehicle, the dealer must be willing to sell the vehicle for such advertised price, exclusive of a rebate, to a retail buyer. A retail buyer may negotiate to purchase additional products or services as well as the trade-in value which allows for the sales price to be higher or lower than the advertised price."

The Board intends to consider this language and any other suggestions that may be made as alternatives to the published amendment, to address the issue of inhibiting bait and switch advertising without hampering a dealer's and purchaser's ability to negotiate a mutually agreeable transaction.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the amendments are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amendments.

Mr. Bray has also determined that for each of the first five years the amendments are in effect, the public benefit anticipated from enforcement of the proposed amendments will be stronger protection of the public and dealers from those dealers who engage in false, deceptive or misleading practices, as well as better understanding by licensees required to comply with the rules. Mr. Bray has also certified that there will be no impact on small businesses, local economies or overall employment as a result of enforcing or administering the sections. Finally, Mr. Bray has certified that there will be no economic costs for those persons required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. The deadline for submitting comments is April 5, 2002. Please submit sixteen copies. The Texas Motor Vehicle Board will consider the adoption of the proposed amendments at its meeting on April 25, 2002.

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 §5.01A is affected by the proposed amendments.

§105.10. Dealer Price Advertising.

(a) The featured sale price of a new or used motor vehicle, when advertised, must be the highest [~~a~~] price for which a dealer is willing to sell the advertised vehicle to any retail buyer. The only charges that may be excluded from the advertised price are:

(1) any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by County Road and Bridge Act, §4.202(g);

(2) any taxes; and

(3) any other fees or charges that are allowed or prescribed by law.

(b) A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(c) If a price advertisement discloses a rebate cash back or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

(1) If an advertisement discloses a discount savings claim, this incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a discount savings claim.
Figure: 16 TAC §105.10(c)(1)

(2) If an advertisement discloses a rebate, this incentive must be disclosed as a deduction from the advertised price. The following is an acceptable format for advertising a price with a rebate.
Figure: 16 TAC §105.10(c)(2)

(3) If an advertisement discloses both a rebate and a discount savings claim, the incentives must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a rebate and a discount savings claim.
Figure: 16 TAC §105.10(c)(3)

(d) In the event that the manufacturer offers a discount on a package of options then that discount should be disclosed above or prior to the manufacturer's suggested retail price (MSRP) with a total price of the vehicle before option discounts. The following is an acceptable format.
Figure: 16 TAC §105.10(d) (No change.)

(e) If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (c) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format.
Figure: 16 TAC §105.10(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 February 15, 2002.

TRD-200200979
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: April 25, 2002
For further information, please call: (512) 416-4899

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CHAPTER 107. WARRANTY PERFORMANCE OBLIGATIONS

16 TAC §§107.6, 107.7, 107.8, 107.10

The Motor Vehicle Board of the Texas Department of Transportation proposes amendments to 16 TAC §§107.6, 107.7, 107.8, and 107.10, Warranty Performance Obligations.

The proposed amendments clarify the procedure for the filing of motions for rehearing related to contested case hearings conducted under §§ 6.07 or 3.08 of the Texas Motor Vehicle Commission Code (Vernon's Texas Civil Statutes, art. 4413(36) and (36a)). The proposed amendments also increase the useful life of motorized vehicles, thereby decreasing the reasonable allowance for use, and eliminate the 10% minimum reasonable allowance for use for non-motorized or towable recreational vehicles. Additionally the proposed changes delegate to the director authority to hear motions to suspend enforcement of final orders for complaints in which the director decided the motions for rehearing. There are also two minor, non-substantive, wording changes to clarify a sentence and to correct an outdated reference.

Changes specific to each section:

The proposed amendment to §107.6 clarifies the wording to make it clear that complaints satisfying either §3.08 or §6.07 will be set for hearing, to include notification of the date, time, and place of the hearing.

The proposed amendments to §107.7(5) and 107.7(7) direct all motions for rehearing involving a complaint to the same decision authority to avoid conflicting orders by different authorities.

The proposed amendments to §107.8(4) increase the expected useful life of motorized vehicles to 120,000 miles to reflect the improvements in vehicle quality since the 100,000 mile standard was adopted in 1988. Additionally, the changes simplify the proof requirements for vehicles having a useful life other than 120,000 miles.

The proposed amendment to §107.8(5) simplifies the proof requirements for non-motorized or towable recreational vehicles having a useful life other than 120 months and deletes the 10% minimum reasonable allowance for use in the interest of fairness to the consumer.

The proposed addition of paragraph §107.8(5)(C) makes a change in the calculation of the reasonable allowance for use for non-motorized or towable recreational vehicles by eliminating the time the vehicle is out of service for repair because the vehicle is unavailable for the complainant's use.

The proposed addition of §107.10(7) directs all motions filed subsequent to a decision on a motion for rehearing, including motions to suspend the enforcement of final orders for complaints, to the same authority that decided the motion for rehearing.

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 governments as a result of enforcing or administering the sections.

Mr. Bray has also determined that for each year of the first five years the sections are in effect, the anticipated public benefits are that the public will have a clearer understanding of the process required to secure a review of decisions made by the Motor Vehicle Board on complaints related to motor vehicle warranty performance obligations. The public will also benefit by recovering a greater percentage of the purchase price of motorized and non-motorized vehicles or towable recreational vehicles due to the increase in the useful life of motorized vehicles and the elimination of the 10% minimum reasonable allowance for use of non-motorized vehicles or towable recreational vehicles.

There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the sections as amended is indeterminate but manufacturers, converters and distributors of both motorized and non-motorized or towable recreational vehicles will have some increased cost to reacquire, repair and re-market lemon vehicles.

There will be no impact on local economies or overall employment as a result of these amendments.

Comments, in 16 copies, may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, TX 78768, 512-416-4899. The Motor Vehicle Board will consider adoption of the proposed amendments at its meeting on April 25, 2002. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on April 5, 2002.

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06 which provides that the Motor Vehicle Board with the authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Texas Motor Vehicle Commission Code §§ 3.08 and 6.07 are affected by the proposed amendments.

§107.6. Hearings.

Complaints which satisfy the jurisdictional requirements of the Texas Motor Vehicle Commission Code, §3.08(i) or [~~and~~] §6.07, will be set for hearing and notification of the date, time, and place of the hearing will be given to all parties by certified mail.

(1) - (11) (No change.)

§107.7. Contested Cases: Decisions and Final Orders.

To expedite the resolution of Texas Motor Vehicle Commission Code §§3.08(i) and 6.07 cases, the director is authorized to conduct hearings and issue final orders for the enforcement of these sections, including the delegation of this duty to hearing officers. Review of the hearings officers' decisions and final orders shall be according to the procedures as follows:

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

(5) A motion for rehearing may be directed either to the director or to the Board, as a body, at the election of the party filing the motion. If the party filing the motion does not include a specific request for a rehearing by the members of the Board, the motion shall be deemed to be a request for a rehearing by the director. If more than one party files a motion for rehearing, the first motion filed will determine the decision authority for all motions.

(6) (No change.)

(7) If the director or the Board grants a motion for rehearing, the parties will be notified by first class mail. A rehearing before the director will be scheduled as promptly as possible. A rehearing before the Board will be scheduled at the earliest possible meeting of the Board. After rehearing, the director or Board shall issue a final order and any additional findings of fact or conclusions of law necessary to support the decision or order. The director or the Board may also issue an order granting the relief requested in a motion for rehearing or

replies thereto without the need for a rehearing. Any motion for rehearing filed by the parties as a result of the rehearing will be directed to the same decision authority as granted the motion. If a motion for rehearing and the relief requested is denied, an order so stating will be issued.

(8) (No change.)

§107.8. Decisions.

Unless otherwise indicated, this section applies to decisions made pursuant to Texas Motor Vehicle Commission Code §6.07. Decisions shall give effect to the presumptions provided in the Texas Motor Vehicle Commission Code §6.07(d), where applicable.

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

(4) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the [~~clear and convincing~~] evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 [~~100,000~~] miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.[~~the following:~~]

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120,000 [~~100,000~~] and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 [~~100,000~~] and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the Board [~~TMVC~~] hearing.

(5) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 120 months. Except in cases where the preponderance of the [~~clear and convincing~~] evidence shows that the vehicle has a longer or shorter expected useful life than 120 months, the reasonable allowance for the owner's use of the towable recreational vehicle shall be [~~the greater of 10% of the purchase price, as defined in paragraph (3) of this section, or~~] that amount obtained by adding subparagraphs (A) and (B) of this paragraph. [~~the following:~~]

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as it denominator 120 months, except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of months from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120 months, except the denominator shall be 60 months, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of months of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of months during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the Board hearing.

(C) Any month or part of a month that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this subsection.

(6) - (10) (No change.)

§107.10. Compliance with Order Granting Relief.

Compliance with the Board's order will be monitored by the Board.

(1) - (6) (No change.)

(7) All subsequent motions within the Motor Vehicle Board's jurisdiction, including motions to suspend the enforcement of a final order filed pursuant to the Texas Motor Vehicle Commission Code, §7.01(f), will be directed to the same decision authority that heard the motion for rehearing.

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 February 15, 2002.

TRD-200200977
Brett Bray
Director
Texas Motor Vehicle Board
Proposed date of adoption: April 25, 2002
For further information, please call: (512) 416-4899

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.1 - 184.16

The Texas State Board of Medical Examiners proposes new §§184.1-184.16, concerning Surgical Assistants. The new chapter is proposed as a result of HB 1183 of the 77th Legislature requiring the board to license and regulate surgical assistants.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be fiscal implications to state or local government as a result of enforcing the rules as proposed. The Fiscal impact to those individuals required to comply is as follows: $300 for processing licensure application and $200 for annual renewal. Revenue to state: FY02 estimated at 500 applications x $300 = $150,000; FY03 estimated at 500 renewals x $200 = $100,000 + new applications which we are unable to estimate at this time.

Ms. Shackelford 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 the licensing and regulation of surgical assistants. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed new rules: Title 3, Subtitle C, Tex. Occ. Code Ann. Chapter 206.

§184.1. Purpose.

The purpose of these rules is to create a system of licensing and regulating surgical assistants as a means to ensure the competency of surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients.

§184.2. Definitions.

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

(1) Act - Title 3, Subtitle C, Tex. Occ. Code Ann. Ch. 206.

(2) Address of record - The mailing address of each licensee or applicant as provided to the agency pursuant to the Act.

(3) Advisory committee - An informal advisory committee to the board whose purpose is to advise the board regarding rules relating to the licensure, enforcement, and discipline of surgical assistants.

(4) APA - Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(5) Applicant - A person seeking a surgical assistant license from the board.

(6) Board - The Texas State Board of Medical Examiners.

(7) Delegating physician - A physician licensed by the board who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.

(8) Direct supervision - supervision by a delegating physician who is physically present and personally directs delegated acts, and remains immediately available in the operating room to respond to any emergency until the patient is released from the operating room or care and has been transferred to another physician.

(9) Submit - The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(10) Surgical assistant - A person licensed as a surgical assistant by the Texas State Board of Medical Examiners.

(11) Surgical or first assisting - providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration or the topical application of a local anesthetic at the operation site.

§184.3. Meetings.

(a) The advisory committee shall meet as requested by the board to carry out the mandates of the Act.

(b) A meeting may be held by telephone conference call.

(c) Special meetings may be called by the president of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

(d) Advisory committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(e) All issues requiring a vote of the committee shall be decided by a simple majority of the members present.

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good moral character;

(8) not have been convicted of a felony or a crime involving moral turpitude;

(9) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(10) not have engaged in fraud or deceit in applying for a license;

(11) pass an independently evaluated surgical assistant examination approved by the board;

(12) have been awarded at least an associate's degree other than in a surgical assistant training program at a two or four year institution of higher education;

(13) have successfully completed an educational program in surgical assisting or a substantially equivalent educational program.

(A) A surgical assistant program or a substantially equivalent program is limited to the following:

(i) a surgical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);

(ii) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(iii) an accredited registered nurse first assistant program; and

(iv) an accredited surgical physician assistant program.

(B) The curriculum of a surgical assisting educational program must include at a minimum the following courses:

(i) anatomy;

(ii) physiology;

(iii) basic pharmacology;

(iv) aseptic techniques;

(v) operative procedures;

(vi) chemistry;

(vii) microbiology;

(viii) pathophysiology; and

(ix) clinical service rotations, that either:

(I) are each 80 hours in length, in the following areas:

(-a-) cardiovascular surgery;
(-b-) emergency medicine;
(-c-) general surgery;
(-d-) obstetrics and gynecology;
(-e-) orthopedics;
(-f-) outpatient medicine; and
(-g-) pediatrics; or

(II) meet the CAAHEP's supervised clinical preceptorship guidelines.

(14) demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application. Applicants must demonstrate completion of at least 20 cases in the following areas:

(A) general surgery;

(B) orthopedic surgery;

(C) peripheral vascular surgery;

(D) endoscopic procedures;

(15) be currently certified by a national certifying board approved by the board; and

(16) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant who submits an application before September 1, 2002 must provide documentation that the applicant has passed an examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) Association of Surgical Technologists; or

(3) National Surgical Assistant Association.

(c) An applicant who submits an application before September 1, 2002 and is unable to meet the educational requirements set out in subsection (a)(12) (13) of this section must provide documentation that the applicant:

(1) will complete before the third anniversary of the date the license is issued under this chapter the following academic courses approved by the board:

(A) anatomy;

(B) physiology;

(C) basic pharmacology;

(D) aseptic techniques;

(E) operative procedures;

(F) chemistry; and

(G) microbiology; or

(2) since September 30, 1995, has practiced full-time as a surgical assistant in the United States under the direct supervision of a physician licensed in the United States and has continuously been certified as a surgical assistant by one of the following national certifying boards:

(A) American Board of Surgical Assistants;

(B) Association of Surgical Technologists; or

(C) National Surgical Assistant Association.

§184.5. Procedural Rules for Licensure Applicants.

(a) An applicant for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose application has been on file with the board in excess of one year from the date of receipt, shall be considered inactive. Any fees previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;

(3) who in any way falsifies the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are received by the board;

(6) must have the application for licensure complete in every detail at least 20 days prior to the board meeting at which the applicant is considered for licensure. An applicant may qualify for a temporary license prior to being considered by the board for licensure, as required by §184.7 of this title (relating to Temporary Licensure); and

(7) must complete an oath swearing that the applicant has submitted an accurate and complete application.

(b) An applicant for licensure who applies before September 1, 2002 must submit a preliminary application along with appropriate application fees in order to qualify for the special eligibility provisions under §206.205 of the Act and §§184.4 (b) and (c) of this title (relating to Qualifications for Licensure).

(c) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with

the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board's licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A surgical assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Tex. Gov't Code, Ch.552. The board may disclose such reports to appropriate licensing authorities in other states.

§184.6. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations used in Texas or another state for licensure.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted directly from the program on a form provided the board.

(5) Evaluations. All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past five years or since graduation from an educational program, in compliance with §184.4(a)(13) of this title (relating to Qualifications for Licensure), whichever is the shorter period.

(6) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance abuse or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance abuse must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for surgical assistant licensure.

§184.7. Temporary Licensure.

(a) The executive director of the board may issue a temporary license to an applicant:

(1) whose completed application has been filed, processed, and found to be in order; and

(2) who has met all other requirements for licensure under the Act but is waiting for the next scheduled meeting of the board for the license to be issued.

(b) A temporary license is valid for 100 days from the date issued and may be extended for not more than an additional 30 days after the expiration date of the initial temporary license.

§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register annually and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired license by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(c) Within 30 days of a surgical assistant's change of mailing, residence or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(d) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

(e) Practicing as a surgical assistant without an annual registration permit for the current year as provided for in the board's rules has the same force and effect as and is subject to all penalties of practicing as a surgical assistant without a license.

§184.9. Relicensure.

If a surgical assistant's license has been expired for one year or longer, the person may not renew the license. The surgical assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

§184.10. Fees Related to the Renewal of Expired Licenses.

(a) If the renewal fee and completed application form are not received on or before the expiration date of the license, the following penalties will be imposed:

(1) one to 90 days late - one and one-half times the required annual registration fee;

(2) 91 days to one year late - two times the required annual registration fee;

(3) over one year late - licensee may not renew the license.

(b) The board shall not waive fees or penalties.

§184.11. Schedule of Fees.

(a) The board shall charge the following non-refundable, non-transferable fees:

(1) Processing licensure application - $300;

(2) Temporary license - $50;

(3) Annual registration fee - $200;

(4) Duplicate license - $45.

(b) All licensure fees or penalties must be submitted in the form of a check, money order or cashier's check payable on or through a United States bank. Fees and penalties are not refundable.

§184.12. Surgical Assistant Scope of Practice.

The practice of surgical assisting is limited to surgical assisting performed under the direct supervision of a physician who delegates the acts. A surgical assistant may practice in any place authorized by a delegating licensed physician, including, but not limited to a clinic, hospital, ambulatory surgical center, or other institutional setting.

§184.13. Physician Supervision.

(a) Supervision shall be continuous, and shall require that the delegating physician be physically present and immediately available in the operating room to personally respond to any emergency until the patient is released from the operating room or care has been transferred to another physician. Telecommunication is insufficient for supervision purposes.

(b) It is the obligation of each team of physician(s) and surgical assistant(s) to ensure that:

(1) the surgical assistant's scope of practice is identified;

(2) delegation of medical tasks is appropriate to the surgical assistant's level of competence;

(3) the relationship between the members of the team is defined;

(4) that the relationship of, and access to, the supervising physician is defined;

(5) a process for evaluation of the surgical assistant's performance is established; and

(6) the surgical assistant's license is not expired.

§184.14. Supervising Physician.

To be authorized to supervise a surgical assistant, a physician must be currently licensed as a physician in this state by the medical board. The

license must be unrestricted and active, and not under an order of the board.

§184.15. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing as provided for in the APA, take disciplinary action against any surgical assistant that:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) violates the Act, or any rules relating to the practice of surgical assisting;

(5) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

(6) habitually uses drugs or alcohol to the extent that, in the opinion of the board, the person cannot safely perform as a surgical assistant;

(7) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(8) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(9) has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure any member of the public;

(10) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(11) has committed any act that is in violation of the laws of this state if the act is connected with practice as a surgical assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the board under this section;

(12) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a surgical assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) unlawfully advertises in a false, misleading, or deceptive manner as defined by §101.201 of the Tex. Occ. Code;

(14) alters, with fraudulent intent, any surgical assistant license, certificate, or diploma;

(15) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(16) directly or indirectly aids or abets the practice as a surgical assistant by any person not duly licensed by the board to practice as a surgical assistant;

(17) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society is local, regional, state, or national in scope, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(18) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(19) sexually abuses or exploits another person during the licensee's practice as a surgical assistant.

§184.16. Discipline of Surgical Assistants.

(a) The board, upon finding a surgical assistant has committed any of the acts set forth in (184.15 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), shall enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice as a surgical assistant;

(2) administer a public reprimand;

(3) order revocation, suspension, limitation, or restriction of a surgical assistant's license, or other authorization to practice as a surgical assistant, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a surgical assistant or stipulating periodic board review;

(4) require a surgical assistant to submit to care, counseling, or treatment by a health care practitioner designated by the board;

(5) order the surgical assistant to perform public service;

(6) require the surgical assistant to complete additional training;

(7) require the surgical assistant to participate in continuing education programs; or

(8) assess an administrative penalty against the surgical assistant.

(b) The board may stay enforcement of any order and place the surgical assistant on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or to impose any other remedial measures or sanctions authorized by subsection (a) of this section in addition to or instead of enforcing the original order.

(c) A private nondisciplinary rehabilitation order may impose one or more of the above board actions or such other actions as agreed to by the board and the person subject to the order.

(d) The time period of an order shall be extended for any period of time in which the person subject to an order subsequently resides or practices outside this state or for any period during which the person's license is subsequently cancelled for nonpayment of licensure 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 February 15, 2002.

TRD-200200969

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 305-7016

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.16

The Texas State Board of Medical Examiners proposes an amendment to §185.16, concerning Supervising Physician. The amendment is necessary to prohibit a physician assistant from being supervised by a physician under a board order.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to prohibit a physician assistant from being supervised by a physician under a board order. There will be no effect on small businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §§204.204, 204.205.

§185.16. Supervising Physician.

(a) To be authorized to supervise a physician assistant, a physician must:

(1) be currently licensed as a physician in this state by the medical board. The license must be unrestricted and active [~~;~~] and may not be under any order of the medical board.

(2) notify the board of the physician's intent to supervise a physician assistant; and

(3) submit a statement to the board that the physician will:

(A) supervise the physician assistant according to rules adopted by the board; and

(B) retain professional and legal responsibility for the care rendered by the physician assistant.

[~~(4) submit the name, Texas license number, and signature of any alternate supervising physician(s).~~]

(b) A physician assistant may be supervised by an alternate supervising physician in the absence of the supervising physician consistent with this chapter, the Texas Medical Practice Act, Physician Assistant Licensing Act, board rules, medical board rules, and any standing orders or protocols established in accordance with these statutes and rules.

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

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §§189.1 - 189.14

The Texas State Board of Medical Examiners proposes new §§189.1-189.14, concerning Compliance Program. The new chapter contains requirements and responsibilities for probationers and the system for monitoring a probationer's compliance.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there may be fiscal implications as a result of enforcing the rules as proposed. There is a cost to persons who must comply that is outlined in the terms of each individual order. There is no additional cost incurred by state government as a result of this rule.

Ms. Shackelford 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 requirements and responsibilities for probationers and the system for monitoring a probationer's compliance. There will be no effect on small businesses. There will be no effect to individuals required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed new sections: Tex. Occ. Code Ann., §164.010.

§189.1. Purpose and Scope.

(a) Purpose. The purposes of this chapter are:

(1) to establish requirements and responsibilities for a probationer who is under an order of the board; and

(2) to establish a system of monitoring a probationer's compliance with the terms and conditions of an order of the board.

(b) Scope.

(1) This chapter shall govern the enforcement of all orders of the board.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the board, board staff, or the substantive rights of any person.

§189.2. Definitions.

(a) Act - Title 3, Subtitle B, Chapter 151-165, Tex Occ. Code Ann. for physicians; Title 3, Subtitle C, Chapter. 204, Tex Occ. Code Ann. for physician assistants; Title 3 Subtitle C, Chapter 206, Tex Occ. Code Ann. for surgical assistants; and Title 3, Subtitle C, Chapter 205, Tex Occ. Code Ann. for acupuncturists.

(b) Address of record - The mailing address of each probationer as provided to the board pursuant to the Act.

(c) Agency - The divisions, departments, and employees of the Texas State Board of Medical Examiners, the Texas State Board of Physician Assistant Examiners, and the Texas State Board of Acupuncture Examiners.

(d) Agency representative - A compliance officer, other agency staff, board member, or agent of the agency.

(e) APA - The Administrative Procedures Act, Tex. Govt. Code, Chapter 2001 as amended.

(f) Authorized representative - An attorney of record or any other person who has been designated in writing by a party to represent the party at a board proceeding

(g) Board - the appointed members of the Board of Medical Examiners for physicians and surgical assistants, the Board of Physician Assistants for physicians assistants, and the Board of Acupuncture for acupuncturists.

(h) Board representative - a board member or district review committee member who sits on a panel at a proceeding to determine compliance with an order.

(i) Chief of compliance - The agency staff person who supervises the agency compliance program.

(j) Compliance officer - An employee of the agency assigned to each probationer to investigate a probationer's compliance with the terms and conditions of an order.

(k) Group practice - Any business entity including a partnership, professional association, professional limited liability company, or other entity allowed by state law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(l) Institutional setting - A medical facility established by a governmental entity, non-profit organization, or educational institution that has a permanent staff, including full-time physician employees, by-laws, and an internal governing structure for the operation of the facility for the purpose of practicing medicine.

(m) Licensee - A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(n) Modification/termination hearing - a hearing before board representatives conducted upon the written request of a probationer for the modification of one or more terms and conditions of an order, the termination of an order prior to the prescribed termination of an order, or the reinstatement of a license following a suspension.

(o) Monitoring physician - A licensed Texas physician who meets the requirements as set out in §189.11 of this title (relating to Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings) and who conducts onsite reviews of a probationer's practice site on a periodic basis for the purpose of monitoring and educating a probationer, and periodically reports in writing to the board on the probationer's medical practice and practice of medicine as stipulated by an order.

(p) Order - An agreed order, final order of the board, rehabilitation order, or other order approved by the board that requires an agency representative to monitor a probationer's compliance with the order's terms and conditions.

(q) Probation appearance - An appearance by a probationer at an informal board proceeding before board representatives to discuss a probationer's compliance with an order.

(r) Probationer - A licensee who is under an order.

(s) Proctor - A licensed Texas physician who meets the requirements as set out in §189.11 of this title (relating to Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings) and who physically and actually works with and oversees a probationer's practice of medicine on a daily basis and periodically reports in writing to the board on the probationer's medical practice and practice of medicine as stipulated by an order.

(t) SOAH - The State Office of Administrative Hearings

(u) Supervising physician - A licensed Texas physician who meets the requirements as set out in §189.11 of this title (relating to Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings) and who is physically present at a probationer's practice on a daily basis in order to evaluate, educate, and provide guidance regarding the probationer's practice of medicine; and periodically reports in writing to the board on probationer's medical practice and practice of medicine as stipulated by an order.

§189.3. Responsibilities of Probationers.

(a) Comply with Terms and Conditions of Order. A probationer must comply with all terms and conditions of his or her order. If a probationer fails to comply with the terms and conditions of an order, the probationer shall be subject to agency review and action for non-compliance as set out in §189.8 of the title (relating to Procedures Concerning Non-Compliance).

(b) Document Continuing Medical Education (CME).

(1) A probationer is solely responsible for providing acceptable documentation to demonstrate compliance with CME or other educational requirements under an order.

(2) The following documentation will be acceptable to demonstrate compliance with CME requirements under an order:

(A) a certificate of completion from any formal CME course taken as defined under §166.2(a)(1) of this title (relating to Continuing Medical Education);

(B) a letter from the presenter(s) on letterhead sent directly from the author of the letter to the agency; or

(C) a report of CME activities provided directly to the agency by a third party testing entity accredited by Accreditation Council for Continuing Medical Education and approved by the American Medical Association or American Osteopathic Association.

(3) The following documentation is not acceptable to demonstrate compliance with a CME or other educational requirement:

(A) a copy of attendance form;

(B) answers from tests taken;

(C) a letter sent by a probationer from an individual stating that the probationer was at a class; or

(D) a listing of CME/ethics courses taken.

(c) Ensure Submission of Third Party Reports.

(1) A probationer is solely responsible for ensuring that all reports are timely submitted to the agency by third parties.

(2) In order to avoid a finding of non-compliance, a probationer must present evidence that the probationer made good faith efforts to ensure the timely submission of reports to the agency from third parties. Evidence may include, but is not limited to:

(A) copies of certified letter(s) with proof of mail receipt, air-bill or shipping document receipt attached, which were sent directly to the third party requesting the report or document;

(B) a copy of a receipt of payments for services rendered by third parties; or

(C) objective evidence that the probationer has attempted to have a report submitted to the agency.

(3) If the agency does not receive reports after a probationer has made good faith efforts to ensure such documentation is submitted by an approved third party, the Executive Director of the agency has the authority to revoke approval of that third party.

§189.4. Limitations on Physician Probationer's Practice.

(a) A probationer is not authorized to supervise a physician assistant, advanced practice nurse, or surgical assistant unless expressly permitted under the probationer's order.

(b) A probationer may not delegate prescriptive authority to a physician assistant or advanced practice nurse unless expressly permitted under the probationer's order.

(c) A finding that a probationer has violated or attempted to violate subsections (a) and (b) of this section shall be considered unprofessional and dishonorable conduct likely to deceive, defraud or injure the public and is a violation of the Act.

§189.5. Compliance Visits and Communications.

(a) Agency representatives shall make random and unannounced visits with a probationer at a probationer's practice location, residence, or other location to investigate compliance with an order.

(b) Agency representatives shall determine the time, date, and location of all visits. A probationer must submit to random unannounced visits. A probationer or a probationer's authorized representative may not request to meet at specific times, dates, or locations.

(c) While agency representatives will focus on assuring the confidentiality of rehabilitation orders, agency representatives investigating a probationer's compliance with a rehabilitation order may communicate with third parties. Agency representatives shall not discuss the existence of an order, findings of fact, conclusions of law, or the terms and conditions of the order with persons to whom the order does not authorize disclosure. This does not preclude agency representatives from communicating that they are employees of the board.

§189.6. Probation Appearances.

(a) Written notice directing a probationer to appear for a probation appearance shall be mailed no less than 10 days before the scheduled probation appearance to the probationer's address of record.

(b) A probationer shall be required to make probation appearances as stipulated in an order unless waived by the board.

(c) Upon recommendation of the executive director, the board may, with just cause, waive probation appearances required under the terms and conditions of an order. Just cause includes, but is not limited to, a probationer being in full compliance with the terms and conditions set forth in an order since the last anniversary date of the order.

§189.7. Modification/Termination Hearings.

(a) A request for a modification/termination hearing or reinstatement hearing must be submitted in writing by the probationer. The writing must specifically detail the requested desired action.

(b) If a probationer is determined to be eligible for a hearing according to the order, §187.43 of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders), and Chapter 167 of this title (relating to Reinstatement and Reissuance), a date and time for the hearing shall be set and the probationer shall be notified in writing.

(c) If the probationer desires to submit evidence for consideration by the board's representatives, the probationer must provide at least three copies of all evidence no less than ten calendar days prior to the hearing. The board's representatives may refuse to consider evidence not timely submitted.

(d) When considering a modification, termination, or reinstatement request, the board's representatives shall make a determination if the probationer is eligible for the request pursuant to §187.43(d) of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders) and/or Chapter 167 of this title (relating to Reinstatement and Reissuance).

(e) When considering a modification, termination, or reinstatement request, the board's representatives may also consider:

(1) evidence presented by probationer;

(2) the existence of pending investigations;

(3) past compliance with the order;

(4) the existence of prior orders; and

(5) any information or evidence the board's representatives deem necessary to make an informed decision.

(f) If a probationer is requesting a reinstatement hearing, the probationer must submit evidence of completion of any required stipulations prior to the hearing being set.

(g) In addition to requirements, set forth in §167.2 of this title (relating to Informal Disposition of Requests for Reinstatement) a probationer requesting reinstatement of a license must prove that the probationer is mentally, physically, clinically, and otherwise competent to return to the practice of medicine.

(h) The decision to modify or terminate all or any part of an order is at the sole discretion of the board unless otherwise specified in the order.

§189.8. Procedures Concerning Non-compliance.

(a) A finding that a probationer is in non-compliance with the terms and conditions of the probationer's order may be made by the board's representatives at the conclusion of a probation appearance or by the executive director.

(b) A finding of non-compliance shall be considered unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public and is a violation of the Act.

(c) Non-compliance includes, but is not limited to:

(1) Failure to comply with a term or condition in an order;

(2) Failure to cooperate with agency representatives;

(3) Failure to promptly respond to communications by agency representatives;

(4) Failure to comply with deadlines set forth in an order or established by agency representatives for the purpose of enforcement of an order;

(5) Failure to timely submit documents required as a term or condition of an order;

(6) Failure to release documents as requested by agency representatives;

(7) Failure and/or refusal to meet with and discuss compliance matters with agency representatives during any compliance visit;

(8) Interference by probationer or agents of probationer that compromises and/or prevents agency representatives from fulfilling duties and responsibilities as set by an order, rule, or statute during a compliance visit; and

(9) Any expression by word or deed, either directly or indirectly, to agency representatives that a reasonable person would find as harassing, insulting, disrespectful, or rude.

(d) Upon a finding of non-compliance, due process will be extended to a probationer in accordance with the Act and the probationer shall be invited to attend a probationer show compliance proceeding as set forth in §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(e) In lieu of a probationary show compliance proceeding and in order to resolve violations of an order, a probationer may waive his or her rights to a hearing as provided under the Act, §187.44 of this title (relating to Probationer Show Compliance Proceedings), and the APA, and accept a settlement agreement proposed by the chief of compliance with the approval of the executive director.

§189.9. Grounds for Temporary Suspension or Automatic Suspension of Probationers.

Certain violations of an order by a probationer are of such a nature that the continuation in practice by the probationer shall be considered a continuing threat to the public welfare. Such violation is grounds for a temporary suspension hearing as provided under §187.41 of this title (relating to Temporary Suspensions) or for automatic suspension pursuant to terms and conditions of the probationer's order. Such violations include, but are not limited to:

(1) failure to pass the Special Purpose Examination within the required number of attempts;

(2) failure to pass the Medical Jurisprudence Examination within the required number of attempts;

(3) testing positive for a prohibited substance;

(4) failure to timely submit to a drug and/or alcohol screen;

(5) refusal to submit to a drug and/or alcohol screen; and

(6) any attempt to circumvent or tamper with the accuracy of a drug and/or alcohol screen.

§189.10. Drug Screens.

(a) If the terms and conditions of an order provide for the screening of a prohibited substance, the probationer shall be screened by urine, blood, hair, breath, or other scientifically acceptable means to test for prohibited substances within a prescribed time period.

(b) Random testing is mandated. Agency representatives shall not make appointments or schedule times to collect screens.

(c) The probationer must submit to the screen within the prescribed time period.

(d) Probationers may not prospectively request copies of screens. The agency does not accept a standing request for copies of all drug screens. Upon receipt of written request, a copy of a screen may be forwarded only to a probationer or a probationer's authorized representative.

(e) The selection of any drug screening panel or screening method is at the sole discretion of the board and may be changed without prior notice to the probationer.

(f) The probationer is responsible for all costs related to drug screens.

§189.11. Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.

(a) Any approval of a physician or other professional to serve as a proctor, monitor, or supervisor or the approval of a group practice or institutional setting required by an order shall be given by the executive director or his or her designee.

(b) Approval of a physician or other professional required by an order must meet all of the following criteria:

(1) board certification by a board certifying organization that meets the requirements of §164.4 of this title (relating to Board Certification);

(2) no economic relationship with probationer;

(3) no direct personal relationship with probationer;

(4) no more than three medical malpractice suits filed and/or pending against the physician or other professional within a five year period;

(5) no more than three resolved investigations by the board against the physician or other professional within a five year period; and

(6) no disciplinary history, pending investigations, or formal SOAH complaints with the board.

(c) The criteria for approval of a group practice or institutional setting required by an order may include a review of the physicians connected with the group practice or institutional setting utilizing the criteria set forth in subsection (b) of this section.

(d) The executive director or his or her designee may consider other factors in addition to those listed in subsection (b) of this section.

§189.12. Suspended licenses.

A probationer whose license has been suspended by the board remains under the jurisdiction of the board and must comply with Chapter 166 of this title (relating to Physician Registration). Failure to do so may lead to cancellation of probationer's license for non-payment.

§189.13. Investigative Reports.

All reports created by agency representatives while investigating a probationer's compliance with an order are investigative reports as defined by the Act.

§189.14. Receipt of Probationer's Address of Record and Contact Information.

(a) A probationer must maintain an address of record with the agency.

(b) In addition to the requirements set out in subsection (a) of this section, a probationer must provide current up to date contact information to the agency. Such contact information shall include, all the following information applicable to the probationer:

(1) Mailing address;

(2) Home address;

(3) Work address;

(4) Home telephone number;

(5) Work telephone number;

(6) Mobile pager number;

(7) Cellular telephone number; and

(8) Electronic mail address.

(c) Any change to the contact information listed under subsection (b) of this section must be reported to the agency within ten calendar days after the effective date of the 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 February 15, 2002.

TRD-200200971
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6

The Texas State Board of Medical Examiners proposes an amendment to §193.6, concerning designation of prescriptive authority to alternative practice sites. The amendment is necessary as a result of SB 1166.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be compliance with SB 1166. There will be no effect on small businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §§157.051, 157.052, 157.053, 157.054, 157.055, 157.056, 157.057, 157.058, 157.059, 157.060.

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.

(a) Purpose. The purpose of this section is to provide guidelines for implementation of the Medical Practice Act ("the Act"), Texas Occupations Code Annotated, §§157.051-157.060, which provide for the use by physicians of standing delegation orders, standing medical orders, physician's orders [~~order~~], or other orders or protocols in delegating authority to physician assistants or advanced practice nurses at a site [~~sites~~] serving medically underserved populations, at a physician's primary practice or alternate practice site, or at a facility-based practice site. [~~described in subsection (j) of this section. In accord with Texas Occupations Code Annotated, §§157.051-157.060,~~] This section establishes minimum standards for supervision by physicians when delegating prescriptive authority to physician assistants and advanced practice nurses at such sites. [~~this section establishes minimum standards for supervision by physicians of physician assistants and advanced practice nurses for provision of services at such sites.~~] This section also provides for the signing of a prescription by an advanced practice nurse or a physician assistant after the person has been designated by the delegating physician as a person delegated to sign a prescription [~~and for the use of prescriptions pre-signed by the supervising physician~~] which may be carried out by a physician assistant or advanced practice nurse according to protocols. Such protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs. Proper use of protocols allows integration of clinical data gathered by the physician assistant or advanced practice nurse. Neither the [~~Medical Practice~~] Act, [~~Texas Occupations Code Annotated~~], §157.051-157.060, nor these rules authorize the exercise of independent medical judgment by physician assistants or advanced practice nurses, and the delegating [~~supervising~~] physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Advanced practice nurses and physician assistants remain professionally responsible for acts performed under the scope and authority of their own licenses.

[~~(b) Physician supervision at site serving medically underserved populations. Physician supervision of a physician assistant or advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:~~]

[~~(1) receives a daily status report to be conveyed in person, by telephone, or by radio from the advanced practice nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;~~]

[~~(2) visits the clinic in person at least once every ten business days during regular business hours during which the advanced practice nurse or physician assistant is on site providing care, to observe and to provide medical direction and consultation to include, but not be limited to:~~]

[~~(A) reviewing with the physician assistant or advanced practice nurse case histories of patients with problems or complications encountered;~~]

[~~(B) personally diagnosing or treating patients requiring physician follow-up;~~]

[~~(C) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the supervising physician;~~]

[~~(3) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals.~~]

[(4) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided patients under such orders.]

[(c) Documentation of supervision. If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be documented through a log kept at the clinic where the physician assistant or advanced practice nurse is located. The log will include the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. Said summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign each log at the conclusion of each site visit. A log is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.]

[(d) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the clinic and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders by fulfilling the requirements for registration as an alternate supervising physician as detailed in rules of the Texas State Board of Physician Assistant Examiners, 22 Texas Administrative Code, Chapter 185.of this title (relating to Physician Assistants).]

[(e) Supervision of clinics. A physician may not supervise more than three clinics without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 150 concurrent hours per week without approval of the board.]

[(f) Exceptions to patient chart review. Exceptions to the percentage of patient chart reviews required by subsection (b)(2)(C) of this section and the provisions of subsection (e) of this section relating to the number of clinics or clinic hours supervised may be made by the board upon special request by a delegating physician. Such a request shall state the special circumstances and needs prompting the exception, the names and locations of the clinics and/or hours to be supervised, and a plan of supervision. In granting an exception, the board shall state the percentage of charts that must be reviewed and/or the number of clinics or the combined clinic hours that can be supervised.]

(b) [(g)] Delegation of prescriptive authority at site serving underserved populations.

(1) Acts that may be delegated. At a site serving a medically underserved population, a physician authorized by the board may delegate to a physician assistant or an advanced practice nurse the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and shall comply with other applicable laws. [A physician may delegate to a physician assistant or advanced practice nurse the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board in treating patients at a site serving a medically underserved population. The prescription forms itself shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Prescriptions issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. An appropriate signature on one of the two signature lines on the prescription shall convey instructions to a pharmacist regarding the pharmacist's authority to dispense a generically equivalent drug, if available. If the physician assistant or advanced practice nurse authorizes generic substitution, the protocol shall provide direction to the physician assistant or advanced practice nurse as to whether and under what circumstances product selection will be permitted by a pharmacist. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under his supervision.]

(2) Physician supervision at site serving medically underserved populations. Physician supervision of a physician assistant or an advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(A) receives a daily status report to be conveyed in person, by telephone, or by radio from the advanced practice nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(B) visits the clinic in person at least once every ten business days during regular business hours during which the advanced practice nurse or physician assistant is on site providing care, in order to observe and provide medical direction and consultation to include, but not be limited to:

(i) reviewing with the physician assistant or advanced practice nurse the case histories of patients with problems or complications encountered;

(ii) personally diagnosing or treating patients requiring physician follow-up; and

(iii) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the physician;

(C) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals; and

(D) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided to patients under such orders.

(3) Supervision of clinics. A physician may not supervise more than three clinics serving medically underserved populations without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 150 concurrent hours per week without approval of the board.

[(h) Violations. Violation of this section by the supervising physician may result in a refusal to approve supervision or cancellation of the physician's authority to supervise a physician assistant or advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Medical Practice Act, Texas Occupations Code Annotated, §164.001, for violation of Texas Occupations Code Annotated, §164.051. If an

advanced practice nurse violates this section or the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060, the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. If a physician assistant violates this section or the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060, the board shall promptly notify the Texas State Board of Physician Assistant Examiners.]

(c) [(i)] Delegation of prescriptive authority at primary practice site.

(1) "Primary practice site" means:

(A) the practice location where the physician spends the majority of the physician's time;

(B) a licensed hospital, long-term care facility, or adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32;

(D) an established patient's residence; or

(E) where the physician is physically present with the physician assistant or advanced practice nurse.

(2) Acts that may be delegated. At a physician's primary practice site [or a location as described by subsection (j) of this section], a licensed physician authorized [licensed] by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and shall comply with other applicable laws.

(3) Physician supervision. Physician supervision of the carrying out and signing of prescription drug orders shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(4) [(1)] Additional limitations. A physician's authority to delegate the carrying out or signing of a prescription drug order [at his primary practice site] under this subsection [section] is limited to:

(A) three physician assistants or advanced practice nurses or their full-time equivalents practicing at the physician's primary or alternate practice site; and

(B) the patients with whom the physician has established or will establish a physician-patient relationship, but this shall not be construed as requiring the physician to see the patient within a specific period of time.

[(2) "Primary practice site" means:]

[(A) the practice location where the physician spends the majority of the physician's time;]

[(B) a licensed hospital, a licensed long-term care facility, and a licensed adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice, a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32, or an established patient's residence; or]

[(C) where the physician is physically present with the physician assistant or advanced practice nurse.]

(d) Delegation of prescriptive authority at a physician's alternate practice site.

(1) "Alternate practice site" means a site:

(A) where services similar to the services provided at the delegating physician's primary practice site are provided; and

(B) located within 60 miles of the delegating physician's primary practice site.

(2) Acts that may be delegated. At a physician's alternate practice site, a licensed physician authorized by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing, carrying out or signing a prescription drug order under this subsection is limited to dangerous drugs and shall comply with other applicable laws.

(3) Physician supervision is adequate for the purposes of this subsection if the delegating physician:

(A) is on-site with the advance practice nurse or physician assistant at least 20 percent of the time;

(B) randomly reviews at least 10 percent of the medical charts of patients seen by a physician assistant or advanced practice nurse at the site; and

(C) is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency.

(4) A physician may not delegate to a combined number of more than three physician assistants or advanced practice nurses or their full-time equivalents at the physician's primary and alternate practice sites.

(e) [(j)] Delegation of prescriptive authority at a facility-based practice site.

(1) Acts that may be delegated. A licensed physician authorized [licensed] by the board shall be authorized to delegate, to one or more physician assistants or advanced practice nurses acting under adequate physician supervision whose practice is facility based at a licensed hospital or licensed long-term care facility, the carrying out or signing of prescription drug orders if the physician is the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the carrying out or signing of prescription drug orders at the facility in which the physician assistant or advanced practice nurse practices. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and shall comply with other applicable laws.

(2) Limitations on authority to delegate. A physician's authority to delegate under this subsection is limited as follows [~~in paragraphs (1)-(5) of this subsection~~]:

(A) [~~(1)~~] the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(B) [~~(2)~~] the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair;

(C) [~~(3)~~] the delegation does not permit the carrying out or signing of prescription drug orders for the care or treatment of the patients of any other physician without the prior consent of that physician;

(D) [~~(4)~~] delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the carrying out and signing of prescription drug orders to no more than three advanced practice nurses or physician assistants or their full-time equivalents; and

(E) [~~(5)~~] under this section, a physician may not delegate at more than one licensed hospital or more than two long-term care facilities unless approved by the board.

(3) Physician supervision. Physician supervision of the carrying out and signing of a prescription drug order shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(f) Documentation of supervision. If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be documented. The documentation should be through a log or other method appropriate to the practice. The documentation will include the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. Said summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign the documentation at the conclusion of each site visit. Documentation is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(g) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the site and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders by fulfilling the requirements for registration as an alternate supervising physician to include completing and submitting a board approved form.

(h) Prescription forms. Prescription forms shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Prescriptions issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under the physician's supervision.

(i) Waivers.

(1) The board may waive or modify any of the site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to an advanced practice nurse or physician assistant at facilities serving medically underserved populations, at physician primary and alternate practice sites, and at facility-based practice sites.

(2) The board may grant a waiver under subsection (1) if the board determines that:

(A) the practice site where the physician is seeking to delegate prescriptive authority is unable to meet the requirements of Chapter 157 of the Act or this section, or compliance would cause an undue burden without a corresponding benefit to patient care;

(B) safeguards exist for patient care and for fostering a collaborative practice between the physician and the advanced practice nurses and physician assistants; and

(C) if the requirement for which the waiver is sought is the amount of time the physician is on-site, the frequency and duration of time the physician is on-site when the advanced practice nurse is present is sufficient for collaboration to occur, taking into consideration the other ways the physician collaborates with the advanced practice nurse or physician assistant at other sites.

(3) The board may not waive the limitation on the number of primary or alternate practice sites at which a physician may delegate the carrying out or signing of prescription drug orders or the number of advanced practice nurses or physician assistants to whom a physician may delegate the carrying out or signing of prescription drug orders.

(4) Procedure.

(A) In accordance with this section and §157.0542 of the Act, the board shall appoint an advisory committee to meet as needed to review and make recommendations on applications for waivers.

(B) A physician may apply for a waiver by submitting a written request to the licensure division of the board.

(C) Applications must be submitted at least 20 days prior to the next scheduled meeting of the advisory committee in order for the committee to consider the application at that meeting.

(D) The board must receive recommendations from the advisory committee at least 20 days prior to the board meeting at which they shall be considered.

(E) An advisory committee recommendation of the approval of a waiver, with or without modifications, requires a vote of at least:

(i) three advanced practice nurse committee members;

(ii) three physician assistant committee members; and

(iii) three physician committee members.

(F) The Standing Orders Committee of the board shall review recommendations from the advisory committee and may recommend to the full board that a waiver be granted, denied or modified.

(G) The board may grant a waiver only if the advisory committee recommends that the waiver be granted, unless the board

determines good cause exists to grant a waiver the committee does not recommend.

(H) The advisory committee may recommend that the board approve a waiver with modifications.

(I) If the board denies a waiver, a written explanation for the denial shall be given to the physician along with any recommended modifications that would make the waiver application acceptable.

(J) The board may revoke, suspend or modify a waiver previously granted after providing the physician notice and opportunity for a hearing as provided for by the Administrative Procedure Act and Chapter 187 of this title (relating to Procedure).

(j) Violations. Violation of this section by the delegating physician may result in a refusal to approve supervision or the cancellation of the physician's authority to delegate to a physician assistant or an advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Act, §164.001, for violation of §164.051. If an advanced practice nurse violates this section or the Act, §§157.051-157.060, the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. If a physician assistant violates this section or the Act, §§157.051-157.060, the board shall promptly notify the Texas State Board of Physician Assistant Examiners.

(k) Delegation to certified registered nurse anesthetists.

(1) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(2) This paragraph shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use or issuance of a triplicate prescription form under the triplicate prescription program, the Health and Safety Code, section 481.075.

(2) The delegation of authority to administer or provide controlled substances under this paragraph must be under a physician's order, medical order, standing delegation order, or protocol which shall require adequate and documented availability for access to medical care.

(3) The physician's orders, medical orders, standing delegation orders, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(4) The authority of a physician to delegate under this paragraph is limited to:

(A) three nurse midwives or physician assistants or their full-time equivalents; and

(B) the designated facility at which the nurse midwife or physician assistant provides care.

(5) The administering or providing of controlled substances under this paragraph shall comply with other applicable laws.

(6) In this paragraph, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(7) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

(8) This paragraph does not permit the physician or nurse midwife or physician assistant to operate a retail pharmacy as defined under the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(9) This paragraph shall be construed to provide a physician the authority to delegate the act or acts of administering or providing controlled substances to a nurse midwife or physician assistant but not as requiring physician delegation of further acts to a nurse midwife or as requiring physician delegation of the administration of medications to registered nurses or physician assistants other than as provided in this paragraph.

(m) Liability. A physician shall not be liable for the act or acts of a physician assistant or advanced practice nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, or other order or protocols authorizing a physician assistant or advanced practice nurse to perform the act or acts of administering, providing, carrying out, or signing a prescription drug order unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act or acts.

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 February 15, 2002.

TRD-200200972
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 305-7016

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.14

The Texas State Board of Plumbing Examiners proposes amendments to §365.14 which provides criteria for Board approval of continuing professional education programs. Section 365.14 also explains how the continuing professional education (CPE) programs shall function.

The proposed amendments to §365.14 will revise the schedule of reporting to the Board of Licensee evaluations of Course Materials, Course Providers and Course Instructors. Currently, Course Material Providers are required by §365.14(a)(12)(G) to have a method for quarterly reporting of Course Provider, Instructors, and Licensee evaluations of Course Materials to the Board. The method that Course Material Providers have used is to assign the reporting to the Course Providers. The Course Providers include the Course Material evaluations in their compilations of the Licensee evaluations of Course Providers and Course Instructors that is required of the Course Providers under §365.14(b)(15)(K). This method has worked well, since it is the Course Provider that has the most direct contact with the Licensees. The Board proposes to remove the reporting requirements from the Course Material Providers. Additionally, the Board has determined that annual reporting is sufficient for Course Providers that have met the Board's requirements and have been providing CPE for at least one CPE course year. The Board proposes to maintain the quarterly reporting requirements for new Course Providers during their first year of providing CPE courses. The proposed amendments are specifically found in §365.14(a)(12)(G) and §365.14(b)(15)(K).

Robert L. Maxwell, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on state and local government as well as small businesses and persons required to comply with the rule amendments.

Mr. Maxwell also has determined that each year of the first five years the rule is effect the public benefit anticipated as a result of enforcing the rule will be a savings to the resources expended by the Course Material Providers, Course Providers and the Board. The Licensee will continue to benefit from the Board's review of CPE evaluations. The citizens health and safety will continue to benefit by having qualified and continually educated plumbers available to them.

Comments on the proposed rule changes may be submitted within 30 days of publication of the proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.14 are proposed under and affect Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §§5(a), 12B(a), 12B(b), 12B(c) and the rule it amends. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 12B(a) requires a plumbing license holder to complete at least six hours of continuing professional education each license year. Section 12B(b) directs that the Board, by rule, adopt criteria for continuing professional education. Section 12B(c) specifies that in order for persons to receive credit for participation in a continuing professional education program or course, the program or course must have been provided according to criteria adopted by the Board and by an individual, business, or association approved by the Board.

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

§365.14. Continuing Professional Education Programs.

(a) Course Materials--Beginning in preparation for the 2000-2001 Continuing Professional Education year (begins on July 1, 2000), the Board will annually approve Course Materials to be used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. The Course Materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the Licensees. Board approval of Course Materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Materials:

(1) - (11) (No change.)

(12) The Board shall annually approve only individuals, businesses or associations to provide Course Materials. Any individual, business or association who wishes to offer to provide Course Materials shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality Course Materials as required in this Section and must include:

(A) - (F) (No change.)

~~[(G) method for quarterly reporting of Course Provider, Instructors, and Licensee evaluations of Course Materials to the Board,]~~

(13) - (19) (No change.)

(b) Course Providers--The Board will annually approve only individuals, businesses or associations as Course Providers. Course Providers will offer classroom and correspondence instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of all licenses issued under the Act. Board approval of Course Providers will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Providers:

(1) - (14) (No change.)

(15) Any individual, business or association who wishes to be a Course Provider shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality instruction in the Course Materials as required in this Section and must include:

(A) - (J) (No change.)

(K) method for [~~quarterly~~] reporting compilations of Licensee evaluations of Course Materials, Course Provider and Course Instructors to the Board, in accordance with the following: [~~and~~]

(i) Course Providers shall provide quarterly reports no later than December 15, March 15, June 15 and September 15, for the first year in which the Course Provider provides CPE courses;

(ii) Renewing Course Providers shall provide only annual reports, no later than September 15 of each year, for the preceding CPE course year.

(L) - (M) (No change.)

(16) - (18) (No change.)

(19) Beginning with the 2000-2001 CPE year, the Board will establish the deadline in which applications must be submitted after the effective date of this rule. For the 2001-2002 and following CPE years, all Course Provider applications must be submitted to the Board office no later than December 1, each year for approval at the Board's

January meeting[~~, unless an extension is requested at or before the January Board meeting and granted by the Board~~].

(20) - (21) (No change.)

(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 February 14, 2002.

TRD-200200938
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 458-2145

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PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 591. GENERAL PROVISIONS

22 TAC §591.21

The Structural Pest Control Board proposes amendments to §591.21, concerning definition of terms. The proposal adds the definition of document to include those records that are maintained by a licensee, the documents used by the Structural Pest Control Board in the normal course of business and those documents provided to a licensee's customer.

Dale Burnett, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

There will be no estimated additional cost, estimated reduction in cost and no estimated loss or increase to state or local government for the first five year period the rule will be in effect.

There will be no cost of compliance with the rule for small businesses. There will be no cost comparison to small or large businesses based on cost per employee, cost per hour of labor or cost per $100 of sales.

Dale Burnett, Executive Director has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be the clarification of the designation of those applications and records as an original or an official paper relied upon as the basis or in support of the authenticity of record.

There are no anticipated economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank Crull, General Counsel, Texas Structural Pest Control Board, 1106 Clayton Lane #100LW, Austin, Texas 78723. Telephone number (512) 451-7200.

The amendment is proposed under Article 135b-6, Tex.Rev.Civ.Stat.Ann., which provides the Structural Pest Control Board with the authority to license and regulate the pest control industry.

Rule Number 591.21, Article 135b-6, is affected by this proposed amendment.

§591.21. Definition of Terms.

In addition to the definitions set out in the Structural Pest Control Act, Section 2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Structural Pest Control Act, Texas Civil Statutes, Article 135b-6, as amended.

(2) Apprentice--A sales or service employee who has been registered with the Structural Pest Control Board, but has not yet passed a technician examination. An apprentice card is valid for a maximum of twelve (12) months.

(3) Bait Process--The use of food or other requisite that may be treated with a pesticide and/or other mitigating agent that will adversely affect the pest.

(4) Barrier--For the purposes of a termite treatment, an area of soil or other material which has been treated with a termiticide.

(5) Board--The Structural Pest Control Board

(6) Category--The type of service or services a person or business entity is authorized to perform.

(7) Chairman--An individual appointed by the Governor, who presides at the Board meetings.

(8) Contract--A binding agreement between two or more persons or parties that spell out in writing, the terms and conditions or such agreement, and will include, but not limited to, warranties or guarantees for pest control work.

(9) Document--any original or official application for technician exam, application for technician license, application for exam and certified applicator license, contract, electronic forms, drawing, guarantee, invoice, map, notice of pre-construction treatment, report, service agreement, termination notice, termite pre-treatment disclosure document, training records, Wood Destroying Insect report, warranty or other paperwork required by the Board. Such a document must be filled out in its entirety when provided or presented by a licensee to either the customer or the Board. Documents required to be maintained by a licensee must be made available to the Board upon request.

(10) [~~(9)~~] Executive Director--The person employed by the Board who administers the provisions of this of this Act and the rules and regulations promulgated by the Board.

(11) [~~(10)~~] Investigator--A structural pest control investigator employed by the Board.

(12) [~~(11)~~] License--A document issued by the Board to a person authorizing the practicing and/or supervising of the professional service or services indicated thereon.

(13) [~~(12)~~] Licensee--The holder of a valid license.

(14) [~~(13)~~] Personal Contact--Physical presence at a work location.

(15) [~~(14)~~] Revoke--To cancel a license issued under authority of the Structural Pest Control Act. When a business license is revoked, the holder of said license must acquire a new license by completing a new application, and paying the required fee. In the case of the certified applicator, the holder of such certified applicator's license must acquire a new license by completing a new application, paying a required fee, and being re-examined in each category desired by said person.

(16) [~~(15)~~] Suspend--To cease operations for a period of time as specified by the Board.

(17) [~~(16)~~] Vice-Chairman--An individual appointed Board member elected by the Board, who presides at the Board meeting in the absence of the Chairman.

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 February 15, 2002.

TRD-200200941
Dale Burnett
Executive Director
Structural Pest Control Board
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 451-7200

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 1. PURPOSE OF RULES, GENERAL PROVISIONS

30 TAC §1.3, §1.4

The Texas Natural Resource Conservation Commission (commission or agency) proposes amendments to §1.3 and §1.4. The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the proposed amendments reflect this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th legislative session, the agency underwent the sunset review process culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: "Effective January 1, 2004: (1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights and obligations of the Texas Commission on Environmental Quality;...."

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: "The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission."

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-prong approach in effectuating the name changes in its rules. First, the commission proposes through this limited rulemaking to change key provisions of its rules, such as the name on the seal and addresses of the agency and chief clerk in this chapter and the definition of "commission" in 30 TAC Chapter 3 (being proposed concurrently in this issue of the *Texas Register*), effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION BY SECTION DISCUSSION

Section 1.3, Business Office and Mailing Address of the Agency, is proposed to be amended in subsection (a) to add "Texas Commission on Environmental Quality" to the agency mailing address, effective September 1, 2002. In subsection (b) the name of the agency appearing in the chief clerk's address is proposed to be amended to the Texas Commission on Environmental Quality, effective September 1, 2002.

Section 1.4, Seal of the Commission, is proposed to be amended to change the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there are anticipated to be no significant fiscal implications to units of state or local government as a result of administration and enforcement of the proposed rules.

This rulemaking is intended to implement certain provisions of HB 2912. This bill changed the name of the commission to the Texas Commission on Environmental Quality, effective January 1, 2004. In order to comply with the name change, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The cost to the agency to comply with this rulemaking is not anticipated to be significant. The proposed rulemaking only affects the agency. No other units of state and local government should be affected by this proposal. The commission does not anticipate significant fiscal implications due to implementation of the proposed amendments by units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from administration of the proposed rules would be compliance

with the terms of HB 2912 regarding the change of the agency's name to the Texas Commission on Environmental Quality. To comply with the name-change provision of HB 2912, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The proposed rulemaking is intended to only affect the operations of the agency by changing the seal of the commission and the agency's mailing address to reflect the name change. No individuals or businesses should be significantly affected by these changes; therefore, no significant costs are anticipated to individuals and businesses due to implementation of this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are anticipated to be no adverse fiscal implications to small or micro-businesses as a result of the proposed amended sections, which are intended to implement provisions of HB 2912 concerning the change of the agency's name to the Texas Commission on Environmental Quality. To comply with the name-change provision of HB 2912, this rulemaking is intended to change the seal of the commission and the agency's mailing address to reflect the new name, effective September 1, 2002.

The proposed rulemaking is intended to only affect the operations of the agency by changing the seal of the commission and the agency's mailing address to reflect the name change. No small or micro-businesses should be adversely affected by these changes; therefore, no significant costs to small or micro-businesses are anticipated due to implementation of this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" 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 proposal does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the proposed rules is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by these rules. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in the 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 the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-089-003-AD. Comments must be submitted by 5:00 p.m. on April 1, 2002. For further information, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1973.

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendments implement HB 2912, 77th Legislature, 2001.

§1.3. Business Office and Mailing Address of the Agency.

(a) Agency offices. The agency's offices are located at Park 35, 12100 North Interstate 35, Austin. Effective September 1, 2002, the [~~The commission's~~] mailing address is: Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(b) Chief clerk's address. Effective September 1, 2002, the [~~The~~] chief clerk's mailing address is: Office of Chief Clerk, Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. The chief clerk's office is located in Austin, Park 35, Building F, 12015 North Interstate 35.

§1.4. Seal of the Commission.

Effective September 1, 2002, the [~~The~~] seal of the commission will bear the words "Texas Commission on Environmental Quality" [~~"Texas~~

~~Natural Resource Conservation Commission~~"] encircling the oak and olive branches common to other official state seals.

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 February 15, 2002.

TRD-200200956
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-4712

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CHAPTER 3. DEFINITIONS

30 TAC §3.2

The Texas Natural Resource Conservation Commission (commission or agency) proposes an amendment to §3.2. The commission's name will change to the Texas Commission on Environmental Quality on September 1, 2002, and the proposed amendment reflects this change.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th legislative session, the agency underwent the sunset review process culminating in the enactment of House Bill (HB) 2912, which, among other things, extended the term of the agency to September 1, 2013 and changed its name to the Texas Commission on Environmental Quality.

House Bill 2912, §18.01(a), 77th Legislature, 2001, states that: " Effective January 1, 2004: (1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights and obligations of the Texas Commission on Environmental Quality;...."

House Bill 2912, §18.01(c) grants the commission latitude in phasing in the name change. Section 18.01(c) provides: "The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission."

In accordance with a timetable adopted by the commission on November 9, 2001, formal, public phase in of the agency name change will begin September 1, 2002.

The current name of the agency appears in a number of the commission rules; however, it is not feasible to change all these rules simultaneously to conform with the new name. Rather, the commission will take a two-prong approach in effectuating the name changes in its rules. First, the commission proposes through this limited rulemaking to change key provisions of its rules, such as the name on the seal and address of the chief clerk in 30 TAC Chapter 1 (being proposed concurrently in this issue of the *Texas Register*) and the definition of "commission" in this chapter, effective September 1, 2002. Secondly, the balance of the commission rules in which the current name of the agency appears, or that of its predecessors (Texas Water Commission and Texas Air Control Board), will be revised on a chapter-by-chapter basis as rulemakings are convened to modify those chapters for other reasons or as part of the quadrennial review of our rules in accordance with Texas Government Code, §2001.039.

SECTION DISCUSSION

The name of the agency appearing in §3.2(8) concerning the definition of the "commission" is proposed to be changed as of September 1, 2002 to the Texas Commission on Environmental Quality. Paragraphs (5), (11), (15), (17), (18), (21), (27), (31) - (33), and (35) - (38) are proposed to be amended to make minor grammatical and administrative revisions.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impacts to units of state or local government as a result of administration and enforcement of the proposed rule.

This rulemaking is intended to implement certain provisions of HB 2912. This bill changed the name of the commission to the Texas Commission on Environmental Quality, effective January 1, 2004. In order to comply with the name change, this rulemaking is intended to update the name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No other units of state and local government are affected by this proposal. The commission does not anticipate significant fiscal implications due to implementation of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from administration of the proposed rule would be compliance with the terms of HB 2912 regarding the change of the agency's name to the Texas Commission on Environmental Quality. In order to comply with the name-change provision of HB 2912, this rulemaking is intended to update the name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No individuals or businesses should be affected by these changes; therefore, there are no anticipated costs to individuals and businesses due to implementation of this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to small or micro-businesses as a result of the proposed amended section, which is intended to implement provisions of HB 2912 concerning the change of the agency's name to the Texas Commission on Environmental Quality. In order to comply with the name-change provision of HB 2912, this rulemaking is intended to update the

name of the agency in the existing Chapter 3 definitions rule, effective September 1, 2002.

The proposed rulemaking only affects the agency. No small or micro-businesses should be affected by these changes; therefore, there are no anticipated costs to small or micro-businesses due to implementation of this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" 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 proposal does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking merely proposes to conform certain rules to state statutory requirements relating to the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the proposed rule is to modify certain chapters of the commission rules to reflect the change of the agency's name to the Texas Commission on Environmental Quality in accordance with HB 2912. Promulgation of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, no private property will be affected in any way by this rule. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-089-003-AD. Comments must be submitted by 5:00 p.m. on April 1, 2002. For further information, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1973.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendment implements HB 2912, 77th Legislature, 2001.

§3.2. Definitions.

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

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

(5) CERCLA (Superfund)--Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code (USC), §§9601 - 9675 (1980, as amended).

(6) - (7) (No change.)

(8) Commission--As of September 1, 2002, the agency's name shall be the Texas Commission on Environmental Quality. [~~The Texas Natural Resource Conservation Commission.~~] In these rules, the term "commission" means the commissioners acting in their official capacity.

(9) - (10) (No change.)

(11) CWA--Clean Water Act, Federal Water Pollution Control Act, 33 USC, [~~United States Code~~] §§1251 - 1387 (1977, as amended).

(12) - (14) (No change.)

(15) EPCRA--The Emergency Planning and Community Right-To-Know Act, 42 USC, [~~United States Code~~] §§11001 - 11050 (1986).

(16) (No change.)

(17) FCAA--The Federal Clean Air Act, 42 USC, [~~United States Code~~] §§7401 - 7671q (1970, as amended).

(18) FIFRA--The Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC, [~~United States Code~~] §§135 - 136y (1972, as amended).

(19) - (20) (No change.)

(21) NEPA--The National Environmental Policy Act, 42 USC, [~~United States Code~~] §§4321 - 4370e (1969, as amended).

(22) - (26) (No change.)

(27) PPA--Pollution Prevention Act, 42 USC, [~~United States Code~~] §§13101 - 13109 (1990).

(28) - (30) (No change.)

(31) RCRA--The Resource Conservation and Recovery Act, 42 USC, [~~United States Code~~] §§6901 - 6991i (1976, as amended).

(32) SARA--Superfund Amendments and Reauthorization Act, Public Law Number 99-499, 100 Stat. 1613 (codified as amended in scattered sections of 10 USC [~~United States Code~~], 26 USC [~~United States Code~~], and 42 USC [~~United States Code~~]) (1986).

(33) SDWA--Safe Drinking Water Act, 42 USC, [~~United States Code~~] §§300f - 300j-26 (1974, as amended).

(34) (No change.)

(35) TCAA--The Texas Clean Air Act, Texas Health and Safety Code (THSC), Chapter 382.

(36) TRCA--The Texas Radiation Control Act, THSC [~~Texas Health and Safety Code~~], Chapter 401.

(37) TSCA--Toxic Substances Control Act, 15 USC, [~~United States Code~~] §§2601 - 2692 (1976, as amended).

(38) TSWDA--The Texas Solid Waste Disposal Act, THSC [~~Texas Health and Safety Code~~], Chapter 361.

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 February 15, 2002.

TRD-200200957
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-6087

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CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS
SUBCHAPTER L. ON-SITE SEWAGE FACILITIES

30 TAC §35.901

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §35.901, Emergency Order Concerning On-site Sewage Disposal System. This proposal is published concurrently with a notice of intention to review and readopt Chapter 35 as published in the Review of Agency Rules section of this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission conducted a preliminary review of Chapter 35 in accordance with Texas Government Code, §2001.039, and Senate Bill 178, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. That review determined that the reasons for the rules in Chapter 35 still exist, and the rules are still needed to implement Texas Water Code (TWC), Chapter 5, Subchapter L, Emergency and Temporary Orders. The review of Chapter 35 is published concurrently in the Review of Agency Rules.

SECTION DISCUSSION

The review of Chapter 35 revealed that the language in §35.901, relating to on-site sewage disposal systems, is unclear. The title of Subchapter L and the heading for §35.901 are proposed for amendment to refer to on-site sewage facilities (OSSFs), rather than on-site sewage disposal systems. The proposed amendment to §35.901 clarifies that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF and that the commission may issue an emergency order to suspend the license of an OSSF installer.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment revises existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

On-site sewage facilities are one or more systems, typically used at residential homes, schools, office buildings, restaurants, motels, and hospitals, that treat and dispose of 5,000 gallons of wastewater or less each day and that are only used for disposal of sewage where the system is located.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for units of state and local government that own or operate OSSF systems; therefore, the commission anticipates no significant fiscal impacts to units of state and local government due to implementation of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be clarification that in an emergency situation, the commission has the authority to suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment revises existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for individuals or businesses that own or operate OSSF systems; therefore, the commission anticipates no significant fiscal impacts to individuals or businesses due to implementation of the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Although many small and micro-businesses own or operate OSSF systems, there will be no adverse fiscal implications to small or micro-businesses due to implementation of the proposed amendment. This amendment is intended to revise existing commission emergency order rules to clarify that in the case of an emergency, the commission could suspend the license of an OSSF installer, or require the cessation of operation of an OSSF.

The proposed amendment is procedural in nature and does not introduce additional regulatory requirements for small or micro-businesses that own or operate OSSF systems; therefore, the commission anticipates no significant fiscal impacts to small or micro-businesses due to implementation of the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the 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 proposal does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to clarify existing procedural rules. Specifically, the proposed rulemaking would clarify that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF. Additionally, the proposed rulemaking would clarify that the commission may issue an emergency order to suspend the license of an OSSF installer.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules according to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to clarify that the commission may issue an emergency order requiring the owner of an OSSF to cease operation of the OSSF. Additionally, the proposed rulemaking would clarify that the commission may issue an emergency order to suspend the license of an OSSF installer. The proposed amendment will not burden private real property which is the subject of the rule because the amendment clarifies existing rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking is subject to the Texas Coastal Management Program (CMP) and reviewed the rules for consistency in accordance with the Coastal Coordination Act Implementation Rules 31 TAC Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and in particular, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, and identified the rules as potentially affecting an action or authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6).

The commission has conducted a preliminary consistency review of the rulemaking. Applicable goals contained in 31 TAC §501.12 (Goals), include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; 5) to balance the benefits from economic development and multiple human uses of the coastal zone; the benefits from protecting, preserving, restoring, and enhancing CNRAs; the benefits from minimizing loss of human life and property; and the benefits from public access to and enjoyment of the coastal zone; 6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; and 9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP.

The policy that is specifically applicable to on-site sewage disposal systems is 31 TAC §501.14(g)(3), relating to nonpoint source water pollution, which requires that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. Location, design, operation, and inspection or maintenance are not addressed in this rulemaking.

The proposed amendment to §35.901 is an editorial change to clarify the intent of the rule and is solely administrative; therefore, it will have no significant effect on the activities governed by the rulemaking, nor will it result in any significant adverse impacts to coastal resources.

Based on this review, the commission has determined that the rulemaking will not have direct or significant adverse effect on any CNRAs; nor will the rulemaking have a substantive effect on commission actions subject to the CMP. The commission seeks public comment on this preliminary consistency determination.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-007-035-AD. Comments must be received by 5:00 p.m., April 1, 2002. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §§5.103, 5.105, and 5.513. Section 5.103 provides the commission authority to adopt rules necessary to carry out its powers and duties under the TWC and the Texas Health and Safety Code. Section 5.105 grants the commission authority to establish and approve the

general policy of the commission by rule. Section 5.513 provides the commission with the authority to issue emergency orders for OSSFs.

The proposed amendment implements TWC, §5.513, Emergency Order Concerning On-Site Sewage Disposal System, which authorizes the commission to issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the public health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Texas Health and Safety Code, Chapter 366, or a rule adopted under that chapter.

§35.901. Emergency Order Concerning On-Site *[~~On-site~~] Sewage* Facilities *[~~Disposal System~~].*

If the commission finds that an emergency exists and that the public health and safety is endangered because the construction or operation of an on-site sewage facility (OSSF) does not comply with Texas Health and Safety Code, Chapter 366, or Chapter 285 of this title (relating to On-Site Sewage Facilities); the commission may issue an emergency order that:

(1) suspends the license of an OSSF installer; or

(2) requires cessation of operation of an OSSF. [~~The commission may issue an emergency order suspending the registration of the installer of an on-site sewage disposal system, regulating an on-site sewage disposal system, or both, if the commission finds that an emergency exists and that the pubic health and safety is endangered because of the operation of an on-site sewage disposal system that does not comply with Texas Health and Safety Code, Chapter 366, or a rule adopted under that chapter.~~]

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 February 15, 2002.

TRD-200200945
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-5017

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CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER B. OUTDOOR BURNING

30 TAC §111.209

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §111.209.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2912, Article 17, 77th Legislature, 2001, amended the Occupation Code by adding a new §801.361, Disposal of Animal Remains, to allow veterinarians to dispose of animal remains by burial or burning under limited circumstances. Occupation Code, §801.361, allows veterinarians to burn or bury animal remains only if they do so on their own property; the property is in a county with a population of less than 10,000; and they do not charge for the burning or burial. The section also restricts the commission from adopting a rule that prohibits conduct authorized by the section. The commission is proposing an amendment to Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, in order to make existing rules on burning consistent with the new legislation. The revisions necessary in 30 TAC Chapter 330 to make existing rules on burial consistent with the new legislation are being proposed in a future rulemaking.

The existing rules in Chapter 111 prohibit outdoor burning in the State of Texas except as provided by Subchapter B, Outdoor Burning, or by orders or permits of the commission. The existing exceptions in Subchapter B regarding disposal of animal carcasses allows only for the burning of diseased animal carcasses when burning is the most effective means of controlling the spread of disease. The commission proposes adding an additional exception to implement the authorization added by HB 2912.

SECTION DISCUSSION

The proposed amendment to §111.209, Exception for Disposal Fires, is necessary to implement the burning authorization provided by HB 2912. The proposed amendment adds a new paragraph (3) to provide an exception to the prohibition of outdoor burning for animal remains burning by a veterinarian if the burning is conducted on property owned by the veterinarian; the property is in a county with a population of less than 10,000; and the veterinarian does not charge for the burning. Animal remains refer to an animal that dies in the care of the veterinarian and does not include any other type of medical waste.

Texas Government Code, §311.005, General Definitions, defines "population" to mean population according to the most recent federal decennial census. Therefore, the population figure of 10,000 specified in the proposed rule amendment is based on the most recent federal decennial census.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impacts to units of state or local government as a result of administration and enforcement of the proposed rule.

This rulemaking is intended to implement certain provisions of HB 2912. This bill allows a veterinarian to dispose of animal remains by burial or burning only if the disposal occurs on property owned by the veterinarian, the veterinarian does not charge for the disposal, and if the disposal occurs in a county with a population of less than 10,000. In order to comply with the legislation, this rulemaking is intended to add an additional exemption to existing commission outdoor burning rules to implement the authorization added by HB 2912.

The provisions in this rulemaking are voluntary and only apply to veterinarians in counties with a population less than 10,000. The commission does not anticipate this rulemaking will affect any units of state or local government.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from administration of the proposed rule would be compliance with the terms of HB 2912 regarding the authority for a veterinarian that meets certain conditions to dispose of animal remains on-site through burial or burning.

This rulemaking is intended to implement certain provisions of HB 2912, which allows a veterinarian to dispose of animal remains by burial or burning only if the disposal occurs on property owned by the veterinarian, the veterinarian does not charge for the disposal, and if the disposal occurs in a county with a population of less than 10,000. In order to comply with the legislation, this rulemaking is intended to add an additional exemption to existing commission outdoor burning rules to implement the authorization added by HB 2912.

The proposed voluntary provisions do not add additional regulatory requirements for affected individuals and businesses and only apply to veterinarians in counties with a population less than 10,000. This rulemaking is intended to increase disposal flexibility by providing qualifying veterinarians authorization to dispose of animal remains on-site. This authorization could result in cost savings for veterinarians that would no longer be required to have animal remains shipped and disposed of offsite. Additionally, individuals that have deceased animals disposed of by veterinarians on-site would not have to pay for the disposal. According to a random sampling of veterinarians by the Texas Veterinary Medical Association, the cost for offsite animal disposal ranges between approximately $30 to $250, depending on the location of disposal site and the size of the animal being disposed.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to small or micro-businesses as a result of the proposed amended section, which is intended to implement provisions of HB 2912, which allows a veterinarian to dispose of animal remains by burial or burning only if the disposal occurs on property owned by the veterinarian, the veterinarian does not charge for the disposal, and if the disposal occurs in a county with a population of less than 10,000. In order to comply with the legislation, this rulemaking is intended to add an additional exemption to existing commission outdoor burning rules to implement the authorization added by HB 2912.

The proposed voluntary provisions do not add additional regulatory requirements for affected small and micro-businesses and only apply to veterinarians in counties with a population less than 10,000. This rulemaking is intended to increase disposal flexibility by providing qualifying veterinarians authorization to dispose of animal remains on-site. This authorization could result in cost savings for veterinarians that would no longer be required to have animal remains shipped and disposed of offsite. Additionally, individuals that have deceased animals disposed of by veterinarians on-site would not have to pay for the disposal. According to a random sampling of veterinarians by the Texas Veterinary Medical Association, the cost for offsite animal disposal ranges between approximately $30 to $250, depending on the location of disposal site and the size of the animal being disposed.

LOCAL EMPLOYMENT IMPACT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposed amendment to §111.209 is only intended to make existing commission rules consistent with the new legislative changes made to the Occupation Code, and the rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed amendment does not qualify as a "major environmental rule." Furthermore, the analysis required by §2001.0225(c) does not apply because the proposed rule does not meet any of the four applicability requirements of a major environmental rule. The proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule is proposed specifically to comply with HB 2912, and does not exceed the requirements of that bill. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to make existing commission rules consistent with the new legislative changes made to the Occupation Code by HB 2912. The proposed rule would substantially advance this purpose by allowing veterinarians doing business in sparsely populated counties to dispose of an animal that dies in the care of the veterinarian.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule will not affect private real property rights because it will not burden, restrict, or limit an owner's property rights which would otherwise exist in the absence of the regulation. The proposed rule will actually expand the allowable uses of a veterinarian's private real property. Consequently, the proposed rule does not meet the definition of a taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and, therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the proposed rulemaking for consistency with the CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)).

The specific purpose of the proposed rule is to make existing commission rules consistent with the new legislative changes made to the Occupation Code by HB 2912. The proposed rule authorizes veterinarians to burn animal remains if they do so on their own property; the property is in a county with a population of less than 10,000; and they do not charge for the burning. Because of the limited circumstances under which burning is authorized, the commission anticipates that promulgation and enforcement of the proposed rule will not have a direct or significant adverse effect on any CNRAs, nor will the rulemaking have a substantive effect on commission actions subject to the CMP. Therefore, the rulemaking is consistent with the applicable goals and policy. The commission seeks public comment on this preliminary consistency determination.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 28, 2002 at 2:00 p.m. at the commission's central office in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-088-111-AI. Comments must be received by 5:00 p.m., April 1, 2002. For further information, please contact Jill Burditt, Regulation Development Section, (512) 239-0560.

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.018, which authorizes the commission to control outdoor burning; §382.085, which prohibits unauthorized air emissions; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

The proposed amendment implements Texas Health and Safety Code, TCAA, §382.002, concerning Policy and Purpose; §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.018, concerning Outdoor Burning of Waste and Combustible Material; Texas Water Code, §5.103, concerning Rules; and Occupation Code, §801.361, concerning Disposal of Animal Remains.

§111.209. Exception for Disposal Fires.

Outdoor burning shall be authorized for:

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

(3) Animal remains burning by a veterinarian if the burning is conducted on property owned by the veterinarian; the property is in a county with a population of less than 10,000; and the veterinarian does not charge for the burning. Animal remains refer to an animal that dies in the care of the veterinarian and does not include any other type of medical waste.

(4) [~~(3)~~] On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burning situation. Commission notification or approval is not required.

(5) [~~(4)~~] Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title, and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order.

(6) [~~(5)~~] Brush, trees, and other plant growth causing a detrimental public health and safety condition may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

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 February 15, 2002.

TRD-200200943
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-5017

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CHAPTER 213. EDWARDS AQUIFER

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §213.4, Application Processing and Approval; and §213.23, Plan Processing and Approval.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature, 2001, passed House Bill (HB) 2912, §10.04 which amended Texas Water Code (TWC), §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer as provided in Subchapter A, §213.4(a)(2).

Rules under 30 TAC Chapter 213 Subchapter A, concerning the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties apply to all regulated developments within the recharge zone and to certain activities within the transition zone and to point source wastewater discharges in the recharge zone and up to ten miles upstream of the recharge zone within the aquifer's contributory watersheds. Regulated development includes any construction-related or post-construction activity on the recharge or transition zones of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically-connected surface streams. These activities include, but are not limited to, the construction of residential or commercial sites, utility lines, roads and highways, sewage collection systems, or aboveground or underground storage tank facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing recharge characteristics of a site is also considered regulated activity.

Currently in §213.4(a)(1), no person may commence the construction of any regulated activity until an Edwards Aquifer protection plan or modifications to the plan have been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director. Section 213.4(c)(1) requires that an original and three copies of the application must be submitted to the appropriate regional office. Under §213.4(a)(2), the regional office then provides copies of the application to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies are required to be distributed within five days of the application being determined to be administratively complete. The executive director must declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Any person may file comments within 30 days of the date the application is mailed to the local governmental entities. The executive director reviews all comments that are timely filed. The executive director must complete the review of an application within 90 days after determining that it is administratively complete.

Effective June 1, 1999, the commission implemented new Chapter 213, Subchapter B to regulate activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which recharge the Edwards Aquifer. United States Geological Survey hydrogeologic studies show that, on average, 80 to 85% of the recharge to the Edwards Aquifer takes place in the stream beds that cross the recharge zone. The regulation of activities that can affect the quality of water flowing into the recharge zone protects the quality of the groundwater in the Edwards Aquifer, thus protecting the existing and potential uses of these water resources.

Regulated activities under Subchapter B include any construction-related or post-construction activity occurring in the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone. These activities include, but are not limited to, the construction of residential or commercial sites, utility lines, roads and highways, or aboveground or underground storage tank facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing stormwater runoff characteristics of a site is also considered regulated activity. Subchapter B rules apply only to regulated activities disturbing at least five acres, or regulated activities disturbing less than five acres which are part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres.

Currently under Subchapter B, no person may commence the construction of any regulated activity until a contributing zone plan or modifications to the plan have been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director.

An original and one copy of the application must be submitted to the appropriate regional office. The executive director must complete the review of an application for contributing zone plan approval within 15 calendar days of receipt by the appropriate regional office. If the executive director fails to issue a letter approving or denying the application within 16 calendar days after receipt of the application, the application shall be deemed to be granted.

This rulemaking proposes to change the number of copies required to be submitted for Edwards Aquifer protection plans submitted under Subchapter A to allow the executive director to comply with the requirement to provide copies of the application to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. The current requirement of submitting an original and three copies does not allow for a copy to be kept by the appropriate regional office after the other copies have been distributed.

For Subchapter B, this rulemaking proposes to provide for a 30-day comment period for contributing zone plans as required under HB 2912. The rulemaking also proposes to change the number of copies of an application which an applicant must submit to ensure the executive director can comply with the new requirement.

Further, to accommodate the proposed 30-day review process, this rulemaking proposes to eliminate the 16-day automatic approval of a contributing zone plan and move to a 90-day approval process. The statute does not require the commission to change the 16-day automatic approval. However, program staff experiences have shown that the 16-day automatic approval following the 30- day comment period does not allow adequate time for further review by program staff or additional work that may be required by the applicant's consultants to address comments received. Subchapter A rules currently provide for a 90-day review time after the 30-day comment period for applications submitted for the recharge and transition zones. This proposed change will make the review time for the contributing zone plans consistent with the review time for the recharge and transition zone plans.

Finally, this rulemaking would change the language in §213.23(e)(2), relating to grounds for denying a contributing zone application, and add it to the proposed §213.23(e). The denial language currently provides the executive director a mechanism to deny, within 15 days, an application submitted for the contributing zone. However, with deletion of the 16-day approval language, this language would no longer apply because the proposed changes would allow construction in the contributing zone to begin only after the agency issues an approval letter.

SECTION BY SECTION DISCUSSION

Subchapter A: Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties

The commission proposes to amend §213.4, Application Processing and Approval, by changing the submission requirement in §213.4(c)(1) from an original and three copies of the application to an original and one copy for the executive director to review. Additionally, one copy for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located, would be required. The rule further clarifies that all the copies must be sent to the appropriate regional office. This allows the executive director to comply with §213.4(a)(2), which requires the regional office to provide copies of the applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. Past practice has shown that three copies may not be adequate to distribute to all of these entities and to retain a copy at the region office.

In addition, with the creation of new groundwater conservation districts during the 77th Legislative Session, 2001, the executive director cannot specify the exact number of copies needed. Thus, the rule has been changed from requiring a specific number to requiring, "additional copies as needed." The number of copies needed is dependent upon the location of the project, because the project could potentially fall under the jurisdiction of more than one groundwater district, in addition to a county and municipality. To assist applicants in determining the number of copies they need to submit, the agency has developed guidance that is available on the agency's web page at *http://www.tnrcc.state.tx.us/EAPP/review.html*. Additionally, applicants that have a project in Hays, Travis, or Williamson Counties can call the Austin Regional Office at (512) 339-2929 for assistance in determining the number of copies they need to submit. Applicants that have projects in Kinney, Uvalde, Medina, Bexar, or Comal Counties can call the San Antonio Regional Office at (210) 409-3096 for assistance.

Subchapter B: Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hayes, Travis and Williamson

The commission proposes to amend the title of Subchapter B by correcting the misspelling of Hays County. The commission proposes to change the title from "Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hayes, Travis and Williamson" to "Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson."

The commission proposes to amend §213.23(a) by adding language which will create a new paragraph (2) and renumbering the existing paragraph (2) to paragraph (3). The new language in paragraph (2) requires the appropriate regional office to provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. Additionally, the rule proposes that the regional office distribute the copies within five days of the application being determined to be administratively complete. Further, the new language proposes to allow any person to file comments within 30 days of the date the application is mailed to local governmental entities. Finally, the rule proposes to require the executive director to review all comments that are timely filed. The commission proposes these changes to incorporate the requirements of HB 2912, §10.04, which as codified in TWC, §26.137, requires the commission to provide a 30-day comment period in the review process for the protection plans in the contributing zone of the Edwards Aquifer as provided in §213.4(a)(2). Additionally, these changes will make the Subchapter B comment period requirements and review period consistent with Subchapter A.

The commission proposes to amend §213.23(c)(1) by changing the submission requirement in subsection (c)(1) from an original and one copy of the application to an original and one copy of the application for the executive director to review and one copy for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. Once the copies are received, the executive director will distribute them to the affected local governmental entities for review and comment. These changes are required under HB 2912, §10.04, which requires the regional offices to provide copies of the applications to parties listed in §213.4(a)(2).

The commission proposes to amend §213.23(e) by deleting paragraphs (1) - (3) and adding language to require that the executive director must complete the review of an application within 90 days after determining that it is administratively complete. Further, the proposed rule requires the executive director to declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Finally, the proposed rule provides that grounds for a deficient application include, but are not limited to, failure to include all information listed in this section and failure to pay all applicable application fees. These proposed changes reflect the language in current §213.23(e)(2) which is proposed to be deleted and added to revised §213.23(e).

The commission proposes these changes to allow adequate time for both the agency to review and respond to comments and for the applicant to respond to questions or requests for information that the agency may have based on comments received during the 30-day comment period. The executive director believes that 90 days will be adequate time for any needed investigation by the executive director's staff or any additional work that may need to be performed by the applicant's consultants. Subchapter A rules currently provide for a 90-day review time for applications submitted for the recharge and transition zones, which the executive director has found to be adequate.

Since the Subchapter B rules became effective June 1, 1999, review of these plans has proven to be similar to that of plans submitted under Subchapter A. It was originally thought that the plans submitted for the contributing zone would allow for an abbreviated review process, since the plans were certified by a licensed professional engineer and no geologic assessment was required. Even though the plans are certified, additional information is frequently needed by the executive director to evaluate the adequacy of the plan. Thus, these rules propose to make the review time consistent between both Subchapters A and B.

Additionally, the current automatic approval for contributing zone plans causes a delay in review and approval for plans submitted for the recharge and transition zones under Subchapter A. Plans are reviewed in the order received to ensure fairness to all applicants. However, when contributing zone plans are submitted, due to the automatic approval after 15 days, staff must re-prioritize and focus on the review of the contributing zone plan first, and the recharge and transition zone plans that are currently under review must be delayed. This change in prioritization may cause further delays and associated costs for the recharge and transition zone projects. If all the plans are reviewed under the

same time frame, plans will be reviewed fairly in the order received.

Currently, the agency is able to exercise more flexibility in accepting recharge and transition zone plans at the time of plan submittal. If a plan is accepted as administratively complete but additional technical information is needed, there is flexibility in the review schedule to obtain the additional technical information needed. Automatic approval on contributing zone plans removes this flexibility. Plans are currently turned away at time of submittal due to the lack of time to receive the additional information needed for the review.

In addition, without adequate time to respond to comments for both the executive director and the applicant, the executive director might be forced to deny plans that would otherwise be approved with additional investigation time. If the executive director denies a plan, the applicant will need to not only resubmit the plan which will start the review process over but also pay an additional application fee for that plan.

It has become increasingly more difficult for the executive director to meet the 15-day review time for submitted contributing zone plans, because of the increase in the total number of contributing zone plans being received. For example, in the Austin Regional Office the number of contributing zone plans received increased from 24 in Fiscal Year (FY) 2000 to 51 in FY 2001. In addition, the Edwards Aquifer Protection Program has seen an increase in plans submitted for the recharge and transition zones as well as the contributing zone. The number of plans submitted for the recharge and transition zones in the Austin Regional Office increased from 305 in FY 2000 to 327 in FY 2001 and in the San Antonio Regional Office, the number increased from 198 to 244.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed rules.

These proposed rules are intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001. The bill required the commission to implement a 30-day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer. This comment period was implemented on September 1, 2001. These proposed rules would also change the number of copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans, replacing it with a 90-day review time after the close of the 30-day comment period. No significant fiscal implications for the commission are anticipated due to the repeal of the 16-day automatic approval provision.

A protection plan consists of blueprints and various applications/plans including water pollution abatement plans, contributing zone plans, organized sewage collection system plans, aboveground/underground storage tank facility plans, modifications to existing plans, or exception requests. These plans have to be approved by the commission before any construction activity in the affected areas can start.

The Edwards Aquifer recharge, transition, and contributing zones are located in portions of Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties. All regulated activities within the recharge, transition, and contributing zones of the Edwards Aquifer would be affected by this rulemaking. Regulated activities, under Subchapter A, include any construction-related or post-construction activity that include, but are not limited to, the following: construction of buildings, utility stations, utility lines, roads, highways, or railroads; clearing, excavation, or any other activity that alters or disturbs the topographic, geologic, or existing recharge characteristics of a site; any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or any other activities that may pose a potential for contaminating the Edwards Aquifer and hydrologically-connected surface streams. Regulated activities under Subchapter B are similar to those under Subchapter A, but apply only to activities disturbing at least five acres, or disturbing less than five acres which are part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres.

The proposed rules will change the requirement for copies of protection plans from requiring a specific number to requiring copies as needed. Currently, the commission requires an original and three copies of a recharge or transition zone protection plan and an original and one copy of a contributing zone protection plan. Upon receiving these copies from applicants for projects located over the recharge or transition zone, the commission's regional offices distribute the copies to affected incorporated cities, groundwater conservation districts, and counties in which the regulated activity will be located. The proposed rules would remove the specific copy criteria and instead require an original and one copy for the commission and one copy for each affected incorporated city, groundwater conservation district, and county in which the regulated activity will be located.

In order to provide the commission with sufficient time to review and analyze comments submitted during the new 30-day comment period, this rulemaking would delete the 16- day automatic approval of contributing zone protection plans. Currently, if the executive director does not issue a letter approving or denying a protection plan submitted for a regulated activity in the contributing zone of the Edwards Aquifer within 16 days, the plan is automatically approved. The proposed timing changes would make the review period for contributing zone protection plans the same as protection plans submitted for regulated activities in the recharge and transition zones of the Edwards Aquifer, which already require a 30-day comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately ten contributing and 50 recharge and transition zone protection plans are submitted by units of state and local government.

The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for units of state and local government that are required to submit protection plans for construction activities in the contributing zone of the Edwards Aquifer. As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The majority of contributing zone plans affected by this provision are not submitted by units of state and local government. Out of the 18 contributing zone plans submitted for review so far in FY 2002, only three have been submitted by units of government. Two of these plans are still pending, awaiting

the completion of the 30-day comment period. The commission has received no information that would indicate that this delay has resulted in significant fiscal impacts for any affected unit of government. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review time after the comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for units of state and local government that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original, which is four copies more than currently required for contributing zone plans and two copies more than for recharge and transition zone plans. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected units of state and local government will pay an additional $60 per copy to comply with the proposed rules.

PUBLIC BENEFIT AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased time for the public and affected units of local government to comment on potential environmental impacts of construction activity over the Edwards Aquifer or in the contributing zone to the Edwards Aquifer, resulting in potentially increased water quality protection of the Edwards Aquifer.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to implement a 30-day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer. This rulemaking would also increase the number of copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans, replacing it with a 90-day review time after the close of the 30-day comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately 60 contributing and 520 recharge and transition zone protection plans are submitted by individuals and businesses.

As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for individuals and businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission has received 18 contributing zone protection plans so far in FY 2002. All but three of these applications have already been approved and processed by the commission. None of the pending three applications were submitted by individuals or larger businesses. The commission has received no information that would indicate that the additional 30-day comment period has resulted in significant fiscal impacts for any affected individual or business since it was implemented on September 1, 2001. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review time after the 30-day comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for individuals and businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected individuals and businesses will pay an additional $60 per copy to comply with the proposed rules.

SMALL AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small and micro-businesses due to implementation of the proposed rules, which are intended to implement provisions of HB 2912, 77th Legislature, 2001. This bill required the commission to implement a 30- day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer.

Additionally, this rulemaking would increase the number of copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans, replacing it with a 90-day review time after the close of the 30-day comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately 60 contributing and 520 recharge and transition zone protection plans are submitted by industry, some of which may be small or micro-businesses.

As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for small or micro-businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission has received 18 contributing zone protection plans so far in FY 2002. Of the 18 plans submitted, at least one has been submitted by a small business. This plan is currently pending, awaiting the completion of the 30-day comment period. The commission has received no information that would indicate that the additional 30-day comment period has resulted in significant fiscal impacts for any small or micro-businesses since implemented on September 1, 2001. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review

time after the 30-day comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for small and micro-businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected small and micro-businesses will have to pay an additional $60 per copy to comply with the proposed rules.

The following is an analysis of the potential cost per employee for small or micro-businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business that is required to provide four additional copies of a contributing zone protection plan would spend an additional $3.00 per employee while a micro-business would spend an additional $12 per employee to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and 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 §2001.0225(g)(3). The rulemaking only makes the following procedural changes: 1) increases the number of copies of an application which an applicant must submit; 2) corrects the misspelling of Hays County; 3) provides for a 30-day comment period in the review process for protection plans in the contributing zone; and 4) substitutes a 90-day approval process for contributing zone plans instead of the 16-day automatic approval. None of these proposed rules are expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, even if the proposed rules did meet the definition of a "major environmental rule," the proposed rules are not subject to §2001.0225 because they do not accomplish any of the four results specified in §2001.0225(a). First, there are no federal law standards relating to or applicable to the protection of groundwater quality in the Edwards Aquifer. Therefore, there are no applicable standards set by federal law that could be exceeded by these rules. Second, the requirements of these proposed rules seek to carry out the commission's statutory responsibility to protect the quality of the aquifer pursuant to TWC, §26.046 and §26.0461 and in accordance with §26.137 and §26.011. Therefore, the rulemaking does not exceed an express requirement of state law. Third, the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in these rules. Therefore, there are no delegation agreement requirements that could be exceeded by these rules. Fourth, the commission proposes these rules to protect the Edwards Aquifer pursuant to and in furtherance of its requirements under the specific state law of TWC, §§26.137, 26.046, and 26.0461. Therefore, the commission does not propose these rules solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purposes of this rulemaking are to implement HB 2912, §10.04 and to make the procedural requirements of the contributing zone plan approvals consistent with the recharge and transition zone plan approvals. The proposed rulemaking advances these purposes by changing the number of copies of an application which an applicant must submit, correcting the misspelling of Hays County, providing for a 30-day comment period in the review process for protection plans in the contributing zone, and substituting a 90-day approval process for contributing zone plans instead of the 16-day automatic approval. This proposed rulemaking will not create any additional burden on private real property and will not constitute a taking. House Bill 2912, §10.04 specifically requires a 30-day comment period for contributing zone plans. The commission decided to propose the 90-day approval process rather than a longer or shorter period because the 16-day automatic approval does not allow program staff adequate time for review and the 90-day approval process will make the rules consistent with the rules of the recharge and transition zone plans.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in San Antonio on March 20, 2002 at 7:00 p.m., in the City Council Chambers located in the Municipal Plaza Building, 103 Main Plaza as well as in Austin on April 3, 2002 at 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-086-213-WT. Comments must be received by 5:00 p.m., April 15, 2002. For

further information, please contact Kathy Ramirez, Regulation Development Section, at (512) 239-6757.

SUBCHAPTER A. EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES

30 TAC §213.4

STATUTORY AUTHORITY

The amendment is proposed under HB 2912, §10.04, which amended TWC, §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer. Additionally, the amendment is proposed under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §26.046, which requires the commission to receive public comment on actions the commission should take to protect the Edwards Aquifer from pollution; and §26.0461, which allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules. Texas Water Code, §26.011 provides that the commission will administer the provisions of TWC, Chapter 26 and establishes the level of quality to be maintained and controls the quality of the water in the state. Additionally, §26.121 prohibits unauthorized discharges; §26.401 gives the goal for groundwater protection in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011, 26.0461, 26.121, 26.137, 26.401, and 28.011.

§213.4. Application Processing and Approval.

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

(c) Application submittal.

(1) Submit one original and one copy for the executive director's review and additional copies as needed for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. The copies must be submitted to the appropriate regional office. [~~An original and three copies of the application must be submitted to the appropriate regional office.~~]

(2) (No change.)

(d)- (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 February 14, 2002.

TRD-200200931
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-4712

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SUBCHAPTER B. CONTRIBUTING ZONE TO THE EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES

30 TAC §213.23

STATUTORY AUTHORITY

The amendment is proposed under HB 2912, §10.04, which amended TWC, §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer. Additionally, the amendment is proposed under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by TWC and other laws of Texas; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §26.046, which requires the commission to receive public comment on actions the commission should take to protect the Edwards Aquifer from pollution; and §26.0461, which allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules. Texas Water Code, §26.011 provides that the commission will administer the provisions of TWC, Chapter 26 and establishes the level of quality to be maintained and controls the quality of the water in the state. Additionally, §26.121 prohibits unauthorized discharges; §26.401 gives the goal for groundwater protection in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011, 26.0461, 26.121, 26.137, 26.401, and 28.011.

§213.23. Plan Processing and Approval.

(a) Approval by executive director.

(1) (No change.)

(2) The appropriate regional office shall provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies will be distributed within five days of the application being determined to be administratively complete. Any person may file comments within 30 days of the date the application is mailed to local governmental entities. The executive director shall review all comments that are timely filed.

(3) [~~(2)~~] A complete application for approval of a contributing zone plan, as described in this section, must be submitted with a copy of the notice of intent and the appropriate fee as specified in §213.27 of this title (relating to Contributing Zone Plan Application and Exception Fees). The application may be submitted to the executive director for approval prior to the submittal of the notice of intent to the EPA.

(b) (No change.)

(c) Submission of application.

(1) Submit one original and one copy for the executive director's review and additional copies as needed for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. The copies must be submitted to the appropriate regional office. [~~An original and one copy of the application must be submitted to the appropriate regional office.~~]

(2) (No change.)

(d) (No change.)

(e) Executive director review. The executive director must complete the review of an application within 90 days after determining that it is administratively complete. The executive director must declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Grounds for a deficient application include, but are not limited to, failure to include all information listed in this section and failure to pay all applicable application fees.

~~[(1) The executive director must complete the review of an application for contributing zone plan approval within 15 calender days of receipt by the appropriate regional office.]~~

~~[(2) Grounds for denial of an application include, but are not limited to, failure to pay the application fee and failure to include all information listed in this section.]~~

~~[(3) If the executive director fails within 16 calendar days after receipt of the application to issue a letter approving or denying the application, the application shall be deemed to be granted.]~~

(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.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-4712

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CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §285.5, §285.8

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §285.5, Submittal Requirements for Planning Materials; and new §285.8, Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Health and Safety Code (THSC), §366.0512, was added by House Bill (HB) 2912, §20.03, 77th Legislature, 2001, to provide the commission the authority to permit multiple treatment and disposal systems located on one tract of land as an on-site sewage facility (OSSF), provided that: the tract of land is at least 100 acres in size; all the systems on the tract of land produce no more than a combined total of 5,000 gallons per day (gpd) on an annual average basis; the systems are only used on a seasonal or intermittent basis; and the systems are used only for disposal of sewage produced on the tract of land.

Owners of large tracts of land with multiple treatment and disposal systems, such as camps and parks, have highlighted concerns about being required to obtain a municipal wastewater treatment permit for the systems, because of the cost and time involved. HB 2912, §20.03, provides both environmental protection and a common-sense remedy for owners of large tracts of land with multiple OSSF systems.

To avoid any conflicts with the rules in 30 TAC Chapter 331 (relating to Underground Injection Control), language has also been included to indicate that the calculated peak flow for each individual system shall be less than 5,000 gpd.

Additionally, language has been included that requires the owner to monitor the flow from the systems and report the flow data to the permitting authority and the executive director (ED). The ED and the permitting authority must review the flow data. If the system produces more than 5,000 gpd, the owner must either bring the system into compliance or obtain a municipal wastewater discharge permit.

SECTION BY SECTION DISCUSSION

Section 285.5(a), *Submittal Requirements for Planning Materials*, is proposed to be amended to add §285.5(a)(2)(D). New subparagraph (D) states that the planning materials for multiple treatment and disposal systems on large tracts of land must be prepared by either a professional engineer or professional sanitarian.

Section 285.8, *Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land*, is proposed to be added to provide the requirements that must be met before multiple treatment and disposal systems on a single tract can be permitted as an OSSF. Additionally, this section includes the procedures for preparing the planning materials, reviewing the planning materials, permitting the systems, and monitoring the systems. Language is also provided to address systems that do not meet the requirements of this section.

Section 285.8(a) proposes to add the requirements that the owner of a single tract of land must meet to be able to obtain an OSSF permit for construction of multiple treatment and disposal systems. Paragraph (1) proposes to provide the size of the tract of land to be at least 100 acres as specified in HB 2912, §20.03. Paragraph (2) proposes to include the language specified in HB 2912, §20.03, that the systems be used only on a seasonal or intermittent basis. Since the intent of the legislation is to address the needs of camps and parks, "seasonal or intermittent" are defined as the time used by camp and park programs as 60 weekdays (Monday through Thursday) during a calendar year, weekends (Friday through Sunday), or any combination of weekends plus 60 weekdays or less during a calendar year. Most of these facilities operate during the summer months, then only on weekends with some limited weekday use the remainder of the year. The 60-weekday requirement would allow use of the camp or park 15 weeks per year. Paragraph (3) proposes to provide that the total of all the systems on the tract of land produce no more than 5,000 gpd on an annual average basis as specified in HB 2912, §20.03. "Annual average basis" is defined as the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. This definition is consistent with other rules of the TNRCC. The flow must be calculated using either actual water use data or data from §285.91(3) of this title (relating to Tables). Paragraph (4) proposes to require that the peak flow for each individual OSSF system be less than 5,000 gpd. If the individual OSSF system

has a peak flow over 5,000 gpd, the system is not considered an OSSF and may not be permitted under Chapter 285 or THSC, Chapter 366. This is consistent with 30 TAC §331.7(c) (relating to Underground Injection Control). Paragraph (5) proposes to provide the language from HB 2912, §20.03, indicating that the systems may only be used for disposal of sewage produced on the single tract of land.

Section 285.8(b) proposes to specify who can prepare and submit the planning materials to the permitting authority and the information that must be included in the planning materials for all existing systems. Paragraph (1) proposes to provide that the application must be submitted on the form provided by the permitting authority. Paragraph (2) proposes to provide that all planning materials required by §285.5(a)(2) of this title must be submitted. Paragraph (3) proposes to provide that the results of a site evaluation must be provided. Paragraph (4) proposes to provide that the location, type of systems, size of systems, and if permitted, information from the permit must be provided for all existing systems. Paragraph (5) proposes to provide that the appropriate fee must be submitted.

Section 285.8(c) proposes to provide that the permitting authority must submit the application package to the ED within five working days after receipt. The review will be completed by the ED within 30 days after receipt of the application package from the permitting authority.

Section 285.8(d) proposes to provide the procedures to follow as a result of the ED review. Paragraph (1) proposes to provide that if the ED determines that the systems may be permitted as an OSSF, the permitting authority shall issue either an authorization to construct, or a notice of approval. Paragraph (2) proposes to require that all multiple systems that do not meet the requirements in subsection (a) may be required to submit an application for either a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) and an authorization under Chapter 331 of this title (relating to Underground Injection Control).

Section 285.8(e) proposes to indicate that all systems on the property, including existing systems, must meet the requirements of Chapter 285. This may require the owners of some existing systems to bring the systems into compliance with Chapter 285.

Section 285.8(f) proposes to specify the monitoring and reporting requirements for all of the systems on the single tract of land. These provisions are necessary to ensure that all of the systems on the tract of land will comply with the requirement for an total combined annual average flow of 5,000 gpd.

Section 285.8(g) proposes to provide that if, as a result of the submittal of the reports required in subsection (f) of this section, the ED or the authorized agent determines that the systems no longer meet the requirement of this section, the owner shall either bring the systems into compliance with the section or submit an application for a permit under 30 TAC Chapter 205 or Chapter 305 and an authorization under 30 TAC Chapter 331.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the TNRCC and most units of state and local government due to administration and enforcement of the proposed rules. However, there could be cost savings for units of government that are currently required to apply for wastewater permits or an authorization for an injection well for camps, parks and other certain tracts of land.

The rules authorize owners of certain tracts of land over 100 acres to apply for OSSF permits instead of municipal wastewater permits. The commission estimates that the cost savings for a unit of government with a new facility that is allowed to be permitted as an OSSF instead of a municipal wastewater facility, would be approximately $62,000 for the first year and $12,000 each year thereafter. Facilities operating under a municipal wastewater permit could choose to transfer to an OSSF permit while utilizing existing equipment, and would save approximately $12,000 annually in operation and monitoring costs. OSSFs are one or more systems that treat and dispose of 5,000 gallons of wastewater or less each day and that are only used for disposal of sewage where the system is located.

The rules are intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001. This rulemaking would allow owners and operators of all existing or new camping and park facilities in Texas, who want to install wastewater treatment devices and disposal facilities, to apply for OSSF permits instead of municipal wastewater permits or an authorization for an injection well. This bill provides the commission the authority to allow a multiple system of treatment devices and disposal facilities to be permitted as an OSSF if the system meets the following conditions: the proposed system would have to be located on a tract of land at least 100 acres in size; the system's total output could not exceed 5,000 gpd on an annual average basis; the system is used on a seasonal or intermittent basis; and the system is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

The total number of new camps and parks that would qualify to apply for an OSSF permit instead of a municipal wastewater permit is unknown. There are at least 560 existing camp facilities that might be eligible to obtain an OSSF permit in lieu of a municipal wastewater permit. Examples of sites that may qualify to apply for OSSF permits include municipal and state-operated camps and parks.

The commission anticipates cost savings for units of state and local government that own or operate existing or new camps or parks that would qualify for an OSSF permit instead of a municipal wastewater permit. Currently, an owner or operator of one of these facilities who wants to install wastewater treatment devices on his property would have to apply for a municipal wastewater permit, which is a costlier and more complicated process than seeking an OSSF permit. The typical costs associated with obtaining a municipal wastewater permit for a facility with the capacity to treat 5,000 gpd or less would be $25,000 for design, $60,000 to install, and $18,000 for annual operation, maintenance, monitoring, and reporting. The total cost for the first year of operation (including the one-time design and installation, and ongoing costs) is estimated to be $103,000.

The costs to design, install, and maintain an OSSF system of similar capacity is anticipated to be less. The commission estimates that the cost for an OSSF capable of treating 5,000 gpd or less would be approximately $2,000 for design, $32,000 to

install, and $6,000 for annual operation, maintenance, monitoring, and reporting costs. Additionally, one meter, costing approximately $1,000, would be required for each system. The total costs for the first year of operation (including the one-time design and installation, and ongoing costs) would be $41,000, or approximately 60% less than the costs for a similar size municipal system. Existing facilities operating under a municipal wastewater permit could choose to transfer to an OSSF permit while utilizing existing equipment, and would save approximately $12,000 annually in operation and monitoring costs.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be continued protection of the environment with cost savings for affected facilities that obtain an OSSF permit in lieu of a municipal wastewater permit, and potentially lower user fees to the public utilizing the facilities.

This rulemaking would implement certain provisions of HB 2912 that allow owners and operators of all existing or new camping and park facilities in Texas, who want to install wastewater treatment devices and disposal facilities, to apply for OSSF permits instead of municipal wastewater permits or an authorization for an injection well. This bill provides the commission the authority to allow a multiple system of treatment devices and disposal facilities to be permitted as an OSSF if the system meets the following conditions: the proposed system would have to be located on a tract of land at least 100 acres in size; the system's total output could not exceed 5,000 gpd on an annual average basis; the system is used on a seasonal or intermittent basis; and the system is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

The total number of new camps and parks that would qualify to apply for an OSSF permit instead of a municipal wastewater permit is unknown. There are at least 560 existing camp facilities that might be eligible to obtain an OSSF permit in lieu of a municipal wastewater permit or an authorization for an injection well. Examples of sites that may qualify to apply for OSSF permits include Boy Scout camps, Girl Scout camps, church camps, YMCA camps, and municipal and state operated camps and parks.

The commission anticipates that there would be cost savings for individuals and businesses that own or operate existing or new camps or parks that would qualify for an OSSF permit instead of a municipal wastewater permit. For similar sized systems capable of treating 5,000 gpd, the first year cost to design, install, and operate a municipal wastewater facility would be approximately $103,000 instead of $41,000 for an OSSF. The annual operating cost for an OSSF, estimated at $6,000, would also be less compared to the annual operating costs of a municipal wastewater facility, estimated to be $18,000. Existing facilities operating under a municipal wastewater permit could choose to transfer to an OSSF permit while utilizing existing equipment, and would save approximately $12,000 annually in operation and monitoring costs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications to small or micro-businesses as a result of implementing the proposed rules. Any small or micro-business operating certain new parks or camping facilities may experience cost savings of approximately $62,000 for the first year, and $12,000 per year thereafter due to implementation of these rules. Facilities operating under a municipal wastewater permit could choose to transfer to an OSSF permit while utilizing existing equipment, and would save approximately $12,000 annually in operation and monitoring costs. This rulemaking would implement certain provisions of HB 2912 that would allow owners and operators of all existing or new camping and park facilities in Texas, who want to install wastewater treatment devices and disposal facilities, to apply for OSSF permits instead of municipal wastewater permits or authorizations for injection wells.

This bill provides the commission the authority to allow a multiple system of treatment devices and disposal facilities to be permitted as an OSSF if the system meets the following conditions: the proposed system would have to be located on a tract of land at least 100 acres in size; the system's total output could not exceed 5,000 gpd on an annual average basis; the system is used on a seasonal or intermittent basis; and the system is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

The total number of new camps and parks that would qualify to apply for an OSSF permit instead of a municipal wastewater permit is unknown. There are at least 560 existing camp facilities that might be eligible to obtain an OSSF permit in lieu of a municipal wastewater permit, some of which are owned and operated by small and micro-businesses, which may qualify.

The commission anticipates that there would be cost savings for small or micro-businesses that own or operate existing or new camps or parks that would qualify for an OSSF permit instead of a municipal wastewater permit. For similar sized systems capable of treating 5,000 gpd, the first year cost to design, install, and operate a municipal wastewater facility would be approximately $103,000 instead of $41,000 for an OSSF. The annual operating cost for an OSSF, estimated at $6,000, would also be less compared to the annual operating costs of a municipal wastewater facility, estimated to be $18,000. The time to receive a permit for an OSSF would also be much quicker. The commission or a local authorized agent normally take between two weeks and two months to process a request for an OSSF permit, while the commission usually takes between nine months to over a year to process a request for a municipal wastewater permit.

The following is an analysis of the potential costs savings per employee for small or micro-businesses affected by the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. A small business that intends to obtain an OSSF in lieu of a municipal wastewater permit for a new facility would save approximately $620 in the first year and $120 annually per employee throughout the duration of the permit. A micro-business that intends to obtain an OSSF in lieu of a municipal wastewater permit for a new facility would save approximately $3,100 in the first year and $600 annually per employee throughout the duration of the permit.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. "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. These rules are proposed to protect the environment but are not expected to adversely affect the economy of the state in a material way.

These proposed rules are anticipated to have a minimal effect on the economy, competition, and jobs, although they enhance the protection of the environment and the public health and safety of citizens of the state. The proposed rules incorporate multiple systems provisions from HB 2912, §20.03, 77th Legislature into proposed new §285.8.

These proposed revisions are not a major rule and do not meet any of the four requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225 these rules do not exceed a standard set by federal law or 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. The EPA does not have a federal program for OSSFs and does not establish requirements for states that implement their own OSSF programs. Thus, the proposed rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authorization for on-site sewage disposal systems.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that would be implemented through these rules are expressly defined under THSC, Chapter 366, which requires the commission to enact rules governing the installation of OSSFs.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.43. The purpose of these revisions is to clarify and define minimum standards to ensure that OSSFs meet the requirements of the law and adequately protect the consumer and the environment from potential exposure to raw sewage resulting from improper installation, operation, and maintenance of sewage facilities, which could result in the discharge of sewage into the environment. These revisions do not provide the commission with any additional authority or jurisdictional responsibility related to OSSFs.

The specific purpose of the proposed rules is to incorporate multiple systems provisions from HB 2912, §20.03, 77th Legislature into proposed new §285.8.

These rules are proposed in an effort to reasonably fulfill an obligation mandated by state law to implement the OSSF program and will substantially advance the implementation of the requirements under THSC, Chapter 366. Promulgation and enforcement of these proposed rules will not affect private real property. Therefore, the commission has determined that these rules will not result in a takings.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC Chapter 505, §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program. The Coastal Coordination Act requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission has determined that the proposed rules are in accordance with 31 TAC §505.22, and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP goals applicable to these proposed rules require that rules governing OSSFs shall require those systems to be located, designed, operated, inspected, and maintained so as to prevent release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals because the standards specified in the rules are intended to reduce discharge of pollutants regardless of location.

The commission seeks public comment on the consistency of the proposed rules with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held on March 26, 2002, in Austin at 10:00 a.m. in Building C, Room 131E at the TNRCC central office located at 12100 Park 35 Circle. Individuals may present oral or written statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2001-096-285-WT. Comments must be received by 5:00 p.m., April 1, 2002. For further information, please contact Joseph Thomas, Policy and Regulations Division, (512) 239-4580.

STATUTORY AUTHORITY

The amendment and new section are proposed under HB 2912, §20.03, 77th Legislature, which provides that the commission may permit multiple OSSFs that are on large tracts of land, are

used on a seasonal or intermittent basis, produce less than 5,000 gpd, and are only used to dispose of sewage produced on the tract of land where the OSSF is located.

The amendment and new section are also proposed under the general authority granted to the commission in THSC, §366.011, which provides the commission with authority over the location, design, construction, installation, and functioning of OSSFs. Additionally, §366.11 requires the commission to administer Chapter 366 and rules adopted under the chapter. The revisions will be implemented according to THSC, §366.012(a)(1), which requires the commission to adopt rules governing the installation of OSSFs; THSC, §366.053(b), which authorizes the commission to adopt rules governing the submission, review, approval, or rejection of OSSF permits; and THSC, §366.058, which requires adoption of rules addressing permit fees.

The amendment and new section also implement the general authority granted in Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC,§7.002, which authorizes the commission to enforce provisions of the TWC and THSC.

§285.5. Submittal Requirements for Planning Materials.

(a) Submittal of planning material. Planning materials required under this chapter shall be submitted by the owner, or owner's agent, to the permitting authority for review and approval according to this section. All planning materials shall comply with this chapter and shall be submitted according to §285.91(9) of this title (relating to Tables). A legal description of the property where an on-site sewage facility (OSSF) [~~OSSF~~] is to be installed must be included with the permit application. Additionally, a scale drawing of the OSSF, all structures served by the OSSF, and all items specified in §285.30(b) of this title (relating to Site Evaluation) and §285.91(10) of this title (relating to Tables) must be included with the permit application.

(1) (No change.)

(2) Planning materials prepared by a professional engineer or professional sanitarian. OSSF planning materials shall be prepared by a professional engineer or professional sanitarian (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(A) (No change.)

(B) any proposal for an OSSF to serve manufactured housing communities, recreational vehicle parks, or multi-unit residential developments where spaces are rented or leased; [~~or~~]

(C) all subdivision and development plans as required in §285.4(c) of this title (relating to Facility Planning); or [~~.~~]

(D) a proposal for multiple treatment and disposal systems on large tracts of land.

(3) (No change.)

(b) (No change.)

§285.8. Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land.

(a) The executive director may authorize the permitting authority to issue a permit for multiple treatment and disposal systems on a tract of land as an OSSF, instead of as a municipal wastewater treatment facility, if:

(1) the systems are located on a tract of land of 100 acres or more;

(2) the systems are used on a seasonal or intermittent basis, which means:

(A) no more than 60 weekdays (Monday through Thursday) during a calendar year;

(B) only on weekends (Friday through Sunday); or

(C) any combination of weekends plus 60 weekdays or less during a calendar year;

(3) the combined flow, calculated using either actual water use data or the data from §285.91(3) of this title (relating to Tables), from all systems is less than 5,000 gallons per day (gpd) on an annual average basis (the arithmetic average of all daily flows from the preceding 12 consecutive calendar months);

(4) the peak flow, calculated using either actual water use data or the data from §285.91(3) of this title (relating to Tables), for each individual system is less than 5,000 gpd; and

(5) the systems are used only for disposal of sewage produced on the tract of land where the systems are located.

(b) To obtain an OSSF permit for multiple treatment and disposal systems, the owner or owner's agent must submit the following to the permitting authority:

(1) an application on the form provided by the permitting authority;

(2) all planning materials according to §285.5(a)(2) of this title (relating to Submittal Requirements for Planning Materials). The planning materials must include details on all existing systems, as well as any proposed new systems;

(3) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation);

(4) the location, types of systems, size of systems, and if permitted, information from the permit for all existing systems; and

(5) the appropriate fee.

(c) The permitting authority must submit the items listed in subsection (b) of this section to the executive director within five working days after receipt. The executive director shall review the materials submitted and respond in writing to the owner or the owner's agent, and to the permitting authority, within 30 working days after receipt of the materials listed in subsection (b) of this section from the permitting authority.

(d) Executive Director Determination.

(1) If the executive director determines that the systems may be permitted as an OSSF, the permitting authority shall issue an authorization to construct for all new systems and a permit for existing systems. If the permitting authority issues an authorization to construct, all steps in §285.3(d) and (e) of this title (relating to General Requirements) must be followed before the system receives a notice of approval.

(2) If the executive director determines that the systems do not meet the requirements of this section, the owner may be required to submit an application for either a permit under Chapters 205 or 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) and an authorization under Chapter 331 of this title (relating to Underground Injection Control).

(e) In order to receive a notice of approval, all systems on the property, including the existing systems, must meet the requirements of this chapter.

(f) The owner shall submit a report of the flow data to both the permitting authority and the executive director once a year in the month following the anniversary month of the receipt of the notice of approval. The reported flows shall be based on sewage flows measured by a totalizing meter installed at each individual system. The flows shall be recorded in a table by calendar month. The table shall give a continuous average of flows.

(g) If, as a result of the submittal of the reports required in subsection (f) of this section, the executive director and the authorized agent determine that the systems no longer meet the requirements of this section, the owner shall either bring the systems into compliance with this section or submit an application for a permit under Chapter 205 or Chapter 305 of this title and an authorization under Chapter 331 of this title.

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 February 15, 2002.

TRD-200200955
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-4712

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §53.6, §53.7

The Texas Parks and Wildlife Department proposes amendments to §53.6, concerning Commercial Fishing Licenses and Tags, and §53.7, concerning Business Licenses and Permits. The amendments to §53.6 and 53.7 increase fee amounts for commercial fishing and business licenses and related transfers and duplicates, and make minor revisions to text for clean up, clarification and consistency. The amendments are necessary in order to: (1) comply with provisions of Senate Bill 1 (General Appropriations Act, Article VI, Rider 22) as enacted by the 77th Legislature, which direct the department to better recover costs associated with administering and managing its commercial fisheries programs; and (2) make clarifying revisions and ensure consistency with TPW statutes.

Suzy Whittenton, Chief Financial Officer, has determined that for each of the first five years the rules as proposed are in effect, there will be fiscal implications to state and local governments as a result of enforcing or administering the rules. For each of the first five years the rules are in effect, the department is estimated to receive approximately $663,000 in additional revenues from increased commercial fishing and business license fees (including general, crab, finfish, menhaden, oyster, shrimp, mussels, non-game fish, and dealers licenses) and associated transfers and duplicates. Note: A portion of the additional revenues generated from the proposed increases will be dedicated to license buyback programs, and will not be available for use on general program costs. This estimate was derived by multiplying the proposed fee increase for each type of license/permit by the number of anticipated transactions for each type of license/permit. The estimated number of transactions was determined based on an analysis of transactions from 1999-2001. The estimate (1) assumes that in each year subsequent to initial implementation, any changes in revenues (based on a continuation of identified trends in license and permit sales) will be insignificant. While there are indications that sales in some areas are declining, there have been increases in other areas, and overall the net effect of these trends appears to be minimal; and (2) has not been adjusted to reflect the 5% commission retained by license deputies. Because only a small percentage of commercial licenses are sold by license deputies, the dollar amount retained would be minimal.

Ms. Whittenton also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be increased program efficiency and greater correlation between user benefit and user pay as it applies to the commercial fisheries program. Those directly benefiting from the program will assume a larger share of program costs -- the additional revenues generated from commercial/business licenses will be used to cover a larger portion of commercial fisheries program costs, thereby reducing the need to finance this program from revenues generated from recreational and other license users.

The rules are expected to have an economic effect on small and microbusinesses and individuals, namely in the amount of increased fees paid by any given business or individual. Most commercial license and business license fees, as well as transfer fees associated with crab, finfish, and bay and bait shrimp licenses will increase by 20%, with the exact dollar amount of increase varying depending on the type of license (ranging between $3 to $700 depending on type). Other transfer and duplicate fees will increase from $5 to $10.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Paul Hammerschmidt, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4650 (e-mail: paul.hammerschmidt@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §§47.002, 47.003,47.007,47.008, 47.009,47.010, 47.011, 47.013, 47.014, 47.017,47.031,47.075,47.079, which authorize the commission to set fees for commercial fishing licenses; 66.017 and 66.020, which authorize the commission to set fees for fish, shellfish and aquatic plant permits; 67.0041, which

authorizes the commission to set fees for permits for non-game species of fish; 76.1031 and 76.104, which authorize the commission to set fees for commercial oyster licenses; 77.031, 77.033, 77.035, 77.0351,77.0361, 77.043 and 77.115, which authorize the commission to set fees for commercial shrimp licenses; 78.002 and 78.003, which authorize the commission to set fees for commercial mussel and clam licenses; and 78.105 and 78.109, which authorize the commission to set fees for commercial crab licenses.

The amendments affect Parks and Wildlife Code, Chapters 47, 77, and 78.

§53.6. Commercial Fishing Licenses and Tags.

(a) Shrimping licenses: [~~The following license fee amounts are effective for the license year beginning September 1, 2001, and thereafter:~~]

(1) Licenses:

(A) resident commercial gulf shrimp boat--$450[~~$375~~];

(B) resident commercial bay shrimp boat--$348[~~$290~~];

(C) resident commercial bait-shrimp boat--$348[~~$290~~];

(D) resident commercial shrimp boat captain's--$30[~~$25~~];

(E) nonresident commercial gulf shrimp boat--$1,350[~~$1,125~~];

(F) nonresident commercial bay shrimp boat--$750[~~$625~~];

(G) nonresident commercial bait-shrimp boat--$750[~~$625~~]; and

(H) nonresident commercial shrimp boat captain's--$120[~~$100~~].

(2) License transfers:

(A) resident commercial gulf shrimp boat license transfer--$10[~~$5.00~~];

(B) resident commercial bay shrimp boat license transfer--$348[~~$290~~];

(C) resident commercial bait-shrimp boat license transfer--$348[~~$290~~];

(D) nonresident commercial gulf shrimp boat license transfer--$10[~~$5.00~~];

(E) nonresident commercial bay shrimp boat license transfer--$750 [~~$290~~]; and

(F) nonresident commercial bait-shrimp boat license transfer--$750[~~$290~~].

(3) Replacement[~~Duplicate~~] License plates:

(A) resident commercial gulf shrimp boat--$10[~~$5.00~~];

(B) resident commercial bay shrimp boat--$10[~~$5.00~~];

(C) resident commercial bait-shrimp boat--$10[~~$5.00~~];

(D) nonresident commercial gulf shrimp boat--$10[~~$5.00~~];

(E) nonresident commercial bay shrimp boat--$10[~~$5.00~~]; and

(F) nonresident commercial bait-shrimp boat--$10[~~$5.00~~].

(b) Oystering licenses.[~~The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter.~~]

(1) Licenses:

(A) resident commercial oyster boat--$420[~~$350~~];

(B) resident sport oyster boat--$10;

(C) resident commercial oyster captain's--$30[~~$25~~];

(D) resident commercial oyster fisherman's--$120[~~$100~~];

(E) nonresident commercial oyster boat--$1,680[~~$1,400~~];

(F) nonresident sport oyster boat--$40[~~$10~~];

(G) nonresident commercial oyster boat captain's--$120[~~$100~~]; and

(H) nonresident commercial oyster fisherman's--$300[~~$250~~]

(2) License transfers:

(A) resident commercial oyster boat transfer--$10[~~$5.00~~]; and

(B) nonresident commercial oyster boat transfer--$10[~~$5.00~~].

(3) Replacement[~~Duplicate~~] License plates:

(A) resident commercial oyster boat--$10[~~$5.00~~]; and

(B) nonresident commercial oyster boat--$10[~~$5.00~~].

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses.

(1) Licenses and permits.[~~The following license fee amounts are effective for the license year beginning September 1, 1997, and thereafter:~~]

(A) resident commercial fishing boat--$18[~~$15~~];

(B) class A menhaden boat--$4,200[~~$ 3,500~~];

(C) class B menhaden boat--$50;

(D) resident general commercial fisherman's--$24[~~$20~~];

(E) resident commercial mussel and clam fisherman's--$36[~~$30~~];

(F) resident shell buyer's--$120[~~$100~~];

(G) nonresident commercial fishing boat--$72[~~$60~~];

(H) nonresident general commercial fisherman's--$180[~~$150~~];

(I) nonresident commercial mussel and clam fisherman's--$960[~~$800~~];

(J) nonresident shell buyer's--$1,800[~~$1,500~~];

(K) menhaden fish plant permit--$180[~~$150~~];

(L) mussel dredge fee--$36[~~$30~~]; and

(M) permit to sell non-game fish--$60[~~$50~~].

(2) License transfers. [~~The following license transfer fee amounts are effective for the license year beginning September 1, 1996, and thereafter:~~]

(A) resident commercial fishing boat license transfer--$10[$5.00]; and

(B) nonresident commercial fishing boat license transfer--$10[$5.00].

(3) Replacement[Duplicate] license plates.[The following duplicate license plate fee amounts are effective for the license year beginning September 1, 1996, and thereafter:]

(A) resident commercial fishing boat--$10[$5.00]; and

(B) nonresident commercial fishing boat--$10[$5.00].

(d) Crab[Crabbing] licenses.

(1) Licenses and permits.[The following license fee amounts are effective for the license year beginning September 1,1998, and thereafter:]

(A) resident commercial crab fisherman's--$600 [$500]; and

(B) nonresident commercial crab fisherman's--$2,400[$2,000].

(2) License transfers.[The following license transfer fee amounts are effective for the license year beginning September 1,1998, and thereafter:]

(A) resident commercial crab fisherman's--$600 [$500]; and

(B) nonresident commercial crab fisherman's--$2,400[$2,000].

(3) Duplicate license plates.[The following license transfer fee amounts are effective for the license year beginning September 1,1998, and thereafter:]

(A) resident commercial crab fisherman's--$10[$5.00]; and

(B) nonresident commercial crab fisherman's--$10[$5.00].

(e) Finfish[Finfishing] licenses.

(1) Licenses and permits.[The following license fee amounts are effective for the license year beginning September 1, 2000, and thereafter:]

(A) resident commercial finfish fisherman's--$360[$300]; and

(B) nonresident commercial finfish fisherman's--$1,440[$1,200]

(2) License transfers.[The following license transfer fee amounts are effective for the license year beginning September 1, 2000, and thereafter:]

(A) resident commercial finfish fisherman's--$360[$300]; and

(B) nonresident commercial finfish fisherman's--$1,440[$1,200]

(3) Duplicate license plates.[The following duplicate license plate fee amounts are effective for the license year beginning September 1, 2000, and thereafter:]

(A) resident commercial finfish fisherman's--$10[$5.00]; and

(B) nonresident commercial finfish fisherman's--$10[$5.00].

§53.7. Business Licenses and Permits.

Fish, bait, and shrimp licenses and tags.

(1) Licenses.[The following license fee amounts are effective for the license year beginning September 1, 2001, and thereafter:]

(A) retail fish dealer's--$84[$70];

(B) retail fish dealer's truck--$156[$130];

(C) wholesale fish dealer's--$750[$625];

(D) wholesale fish dealer's truck--$510[$425];

(E) bait dealer's--individual--$36[$30];

(F) bait dealer-place of business/building--$36[$30];

(G) bait dealer-place of business/motor vehicle--$36[$30];

(H) bait shrimp dealer's--$204[$170];

(I) finfish import--$90[$75]; and

(J) fishing guide--$75.

(2) License transfers.[The following license fee amounts are effective for the license year beginning September 1,1995, and thereafter:]

(A) retail fish dealer's license transfer--$10[$5.00];

(B) retail fish dealer's truck license transfer--$10[$5.00];

(C) wholesale fish dealer's license transfer--$10[$5.00];

(D) wholesale fish dealer's truck license transfer--$10[$5.00];

(E) bait dealer's license transfer--$10[$5.00];

(F) bait dealer's-place of business/building license transfer--$10[$5.00];

(G) bait dealer's-place of business/motor vehicle license transfer--$10[$5.00];

(H) bait shrimp dealer's license transfer--$10[$5.00];

(I) finfish import license transfer--$10[$5.00].

(3) The fee for the saltwater trotline tag shall be $3.00.

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 February 15, 2002.

TRD-200200960
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §§65.601, 65.609 - 65.611

The Texas Parks and Wildlife Department proposes amendments to §§65.601 and 65.609 - 65.611, concerning Scientific Breeder's Permits. The emergence of tuberculosis (TB) and chronic wasting disease (CWD) in both captive and free-ranging deer populations in other states is cause for concern due to the potential threat to wild deer and livestock populations in Texas. The Texas Animal Health Commission (TAHC), which is charged with controlling disease threats to domestic livestock, recently prohibited the importation of white-tailed deer, mule deer, black-tailed deer, and elk into the state of Texas from Colorado in response to the presence of free-ranging CWD in Colorado herds. Free-ranging CWD also has been detected in populations in Nebraska and Wyoming, and is known to have occurred in captive herds in Montana, South Dakota, Oklahoma, Kansas, and Nebraska.

The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal. At the current time, there is no live test for CWD; animals suspected of having CWD must be euthanized in order to obtain brain tissue for definitive diagnosis.

Tuberculosis, though well understood, is difficult to eradicate in free-ranging populations. Currently the state of Michigan is involved in a very expensive, extremely time-consuming effort to control TB in free-ranging deer. Consequently, TAHC requires that animals coming from Michigan to Texas must originate from a certified TB-free facility. Additionally TAHC requires TB testing for any animal that comes into Texas from any state, except for properties that have a TB-free status.

Texas Parks and Wildlife regulates the importation of white-tailed and mule deer under the provisions of Scientific Breeder Permit regulations. Currently, the rules require all deer entering the state to be accompanied by a veterinarian's statement that the animals are free of evidence of contagious and communicable diseases, and further require all imported animals to have been tested in accordance with any applicable regulations of the Texas Animal Health Commission. The current rules, though helpful, do not adequately address several potential problems. The first of these concerns CWD. Because CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Therefore, it is possible that infected or exposed deer could be unknowingly imported into Texas, where they could then possibly infect wild deer or domestic stock. The second concern is that TB, once loose in a free-ranging population, could quickly spread, resulting in quarantines, depopulation events, and other expensive and painful containment measures.

Additionally, the provenance of imported deer cannot be reliably established at the present time, as opposed to the extensive documentation required for movement of domestic livestock. For instance, a deer might be born in a captive herd in Kansas, sold as a fawn at auction in Missouri, transported to New York as a yearling, and then sold as a two-year-old in Texas, making it difficult and perhaps impossible to ascertain if the animal has ever been at risk of infection by contact with positive animals. Finally, because deer imported into Texas are frequently liberated for hunting purposes (1,397 in 2001), the risk to the multi-billion dollar hunting and livestock industries represented by even one infected animal among a wild population is considerable.

Texas Parks and Wildlife has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD and TB to native wildlife and livestock, and to determine the appropriate level of response. TAHC possesses regulatory authority with respect to animal disease issues (in fact, if captive deer test positive for either disease, the facility is immediately subject to existing TAHC rules); for that reason, the department proposes the use of existing TAHC protocols to monitor deer and facilities operating a scientific breeder permit. Further, the department proposes to prohibit the possession of imported deer, except for deer imported prior to the effective date of the rulemaking. The department strongly believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the suspension of importation of deer, pending resolution of the epidemiological uncertainty surrounding imported deer, is a wise and responsible course of action. The proposed rules are intended, first, to prevent the importation of potentially diseased deer, and second, to provide a bulwark against undetected infection, which by the time it is noticed in clinical manifestations among wild populations, could cause incalculable harm.

The amendment to §65.601, concerning Definitions, would add a definition of the term 'healthy condition.' The amendment is necessary to define the characteristics of deer that may be lawfully sold, offered for sale, transported, temporarily relocated, or released to the wild in this state, which in turn allows the health status of captive deer to be monitored. The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, restricts the purchase of deer to in-state sources only and stipulates that transport privileges under a purchase permit do not apply to deer from out of state sources. The amendment is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other states are fully understood and deer in this state can be presumed to be safe from infection. The amendment to §65.610, concerning Transport of Deer and Transport Permit, eliminates current subsection (c) and replaces it with a provision restricting the validity of a transport permit to the transport of deer in-state only. The amendment to §65.611, concerning Prohibited Acts, is three-fold. First, would make it an offense for any person to purchase, sell, offer for sale, transport, temporarily relocate, or release into the wild a deer that is not in a healthy condition. Second, it would make it an offense for any person to possess a deer obtained from an out-of-state source, except for deer obtained prior to the effective date of the rulemaking. Third, it would make it an offense for any person to sell deer to another person if the buyer did not possess a valid purchase permit. The amendment is necessary to provide for monitoring of captive herds to allow the earliest possible detection of disease and to eliminate the future introduction of diseased animals. The amendment is intended to serve the long-term goal of minimizing the risk of disease transmission to wild populations of deer from deer possessed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as

proposed will be the protection of wild, native deer from communicable diseases introduced by deer imported into this state, thus ensuring the public of continued enjoyment of the resource.

There will be no adverse economic effect on small businesses or microbusinesses. The cost to persons required to comply with the rules as proposed will be associated with the tests required for herd certification. The test for chronic wasting disease is approximately $25 per deceased deer. The test for Tuberculosis Herd Accreditation is estimated at $150 (two farm calls by a veterinarian; the veterinarian receives the materials to perform the test from the Texas Animals Health Commission at no cost), plus any additional veterinary charge, which will vary, depending on the veterinarian.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4774 or 1-800-792-1112 extension 4774 (e-mail: jerry.cooke@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

The proposed rules affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes of this subchapter, the terms 'scientific breeder' and 'permittee' include authorized agents.

(2) Certified Wildlife Biologist--A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

(3) Common Carrier--Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

(4) Deer--White-tailed deer of the species *Odocoileus virginianus* or mule deer of the species *Odocoileus hemonius*.

(5) Facility--One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

(6) Healthy Condition--deer possessed under a Scientific Breeder permit are in a healthy condition if the scientific breeder possessing the deer also possesses:

(A) proof of a current, valid herd health plan for the deer within the scientific breeder facility approved by Texas Animal Health Commission; or

(B) proof that the Texas Animal Health Commission has certified the deer within the scientific breeder facility with a Chronic Wasting Disease Complete Monitored Herd status no less stringent than Level A under the provisions of 4 TAC Chapter 40 (relating to Chronic Wasting Disease); and

(C) proof that Texas Animal Health Commission has certified the deer within the scientific breeder facility with a Tuberculosis Herd Accreditation status no less stringent than "Surveyed Herd" under the provisions of 4 TAC Chapter 43, Subchapter C (relating to Eradication of Tuberculosis in Cervidae).

(7) [~~(6)~~] Propagation--The holding of captive deer for reproductive purposes.

(8) [~~(7)~~] Sale--The transfer of possession of deer for consideration and includes a barter and an even exchange.

(9) [~~(8)~~] Scientific--The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.

(10) [~~(9)~~] Serial Number--A permanent number assigned to the scientific breeder by the department.

(11) [~~(10)~~] Unique number--A four-digit alphanumeric identifier used by the department to track the ownership of a specific deer. Unique numbers may be assigned by the department or by the permittee. If the permittee chooses to assign the unique numbers, each deer must be tattooed with the permittee's serial number in one ear and the unique number in the other ear. No two deer shall share a common unique number.

§65.609. Purchase of Deer and Purchase Permit.

(a) Deer may be purchased or obtained for:

(1) holding for propagation purposes if the purchaser possesses a valid scientific breeder's permit; or

(2) liberation for stocking purposes.

(b) Deer may be purchased or obtained only from[~~:~~]

[~~(1)~~] a holder of a valid scientific breeder's permit[~~; or~~]

[~~(2) a lawful out-of-state source~~].

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. A purchase permit is valid for a period of 30 days after it has been completed (to include the unique number of each deer being transferred), dated, signed, and faxed to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The purchase permit shall also be signed and dated by the buyer or buyer's agent prior to or at the time that the transfer of possession of any deer occurs. A purchase permit does not authorize and is not valid for the transport of deer into this state from any other state or country.

(d) A purchase permit is valid for only one transaction and expires after one instance of use.

(e) A one-time, 30-day extension of effectiveness for a purchase permit may be obtained by notifying the department prior to the original expiration date of the purchase permit.

(f) A person may amend a purchase permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(g) The department may issue a purchase permit for liberation for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(h) Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) if they are not hunted prior to liberation; and

(5) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

§65.610. Transport of Deer and Transport Permit.

(a) The holder of a valid scientific breeder's permit may, without any additional permit, transport legally possessed deer:

(1) to another scientific breeder when a valid purchase permit has been issued for that transaction;

(2) to another scientific breeder on a temporary basis for breeding purposes. The scientific breeder providing the deer shall complete and sign a free, department-supplied invoice prior to transporting any deer, which invoice shall accompany all deer to the receiving facility. The scientific breeder receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held in the receiving facility. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the scientific breeder relinquishing the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records). In the event that a deer has not been returned to a facility at the time the annual report is due, a scientific breeder shall submit a photocopy of the incomplete original invoice with the annual report. A photocopy of the completed original invoice shall then be submitted as part of the permittee's annual report for the following year.

(3) to another person on a temporary basis for nursing purposes. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a nursery, which invoice shall accompany all deer to the receiving facility. The person receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the person holding the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(4) to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction;

(5) to and from an accredited veterinarian for the purpose of obtaining medical attention; and

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a DMP facility, which invoice shall accompany all deer to the receiving facility. The DMP permittee or authorized agent receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the facility of origin, the invoice shall be dated and signed by both the person holding the deer under a DMP permit and the scientific breeder, and the invoice shall accompany the deer to the facility of origin. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from[~~:~~]

[~~(1)~~] a scientific breeder[~~; or~~]

[~~(2) a lawful out-of-state source~~].

(c) A transport permit does not authorize and is not valid for the transport of deer into this state from any other state or country. [~~All deer entering the boundaries of this state shall:~~]

[~~(1) be accompanied by a certificate of health, signed by an accredited veterinarian, which bears the purchaser's name and address, specifies the destination of the deer, and certifies that the deer:~~]

[~~(A) have been inspected by the veterinarian named on the certificate within 10 days prior to the time of transport;~~]

[~~(B) are free of external parasites;~~]

[~~(C) are free of evidence of contagious and communicable diseases; and~~]

[~~(D) have been tested in accordance with any applicable regulations of the Texas Animal Health Commission; and~~]

[~~(2) be accompanied by a permit or document from the government agency authorizing the exportation of the deer from the state or country of origin, if such permit or document was required as a condition for export from the state or country of origin.~~]

(d) Except as provided in this subchapter, no person may transport deer during any open season for deer or during the period beginning 10 days immediately prior to an open season for deer unless the person notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.

(e) During an open season for deer or during the period beginning 10 days immediately prior to an open season for deer, deer may be transported for the purposes of this subchapter without prior notification of the department; however, deer transported under this subsection shall be transported only from one scientific breeder facility to another scientific breeder facility. Deer transported under this subsection shall not be liberated unless the scientific breeder holding the deer notifies the Law Enforcement Communications Center no less than 24 hours prior to liberation.

(f) Transport permits shall be effective for 30 days from the date that the scientific breeder has completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction (or their authorized agent) upon the transfer of possession of any deer.

(g) A transport permit is valid for only one transaction, and expires after one instance of use.

(h) A person may amend a transport permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(i) A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(j) No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted scientific breeder facility.

(b) A person commits an offense if that person places or holds deer in captivity at any place or on any property other than property for which a scientific breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold deer at a veterinary facility for treatment.

(c) No live deer taken from the wild may be possessed under a scientific breeder's permit or held in a scientific breeder's facility.

(d) No deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(e) Possession of a scientific breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) No scientific breeder shall hunt or kill, or allow the hunting or killing of deer held pursuant to this subchapter.

(g) No scientific breeder shall exceed the number of deer allowable for the permitted facility, as specified by the department on the scientific breeder's permit.

(h) No person may purchase deer, sell deer, offer deer for sale, transport deer (except as provided in §65.610(a)(5) of this title (relating to Transport of Deer and Transport Permit)), temporarily relocate deer, or release deer into the wild in this state if the deer are in not in a healthy condition as defined in §65.601 of this title (relating to Definitions).

(i) No person may sell deer to another person unless either the purchaser or the seller possesses a purchase permit valid for that specific transaction.

(j) Except as provided in this subsection, no person may possess a deer acquired from an out-of-state source. This subsection does not apply to deer lawfully obtained prior to the effective date of this subsection.

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 February 15, 2002.

TRD-200200982
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice proposes amendments to §161.21, concerning the Role of the Judicial Advisory Council as related to the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD). The amendments are non-substantive, adding the term "judiciary's" and the use of the acronym "CSCD."

Brad Livingston, Chief Financial Officer for TDCJ, has determined that there will be no fiscal implication resulting from the amendments on state or local government for the next five year period, and that the implementation of the amendments will have

no effect on small businesses, as they will not have to comply with the rules.

Mr. Livingston has also determined that the public benefit of the proposal is the clarification that it is the judiciary's statutory responsibility to have a role in the development of community corrections.

Comments should be directed to Mr. Carl Reynolds, TDCJ-OGC, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@TDCJ.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code: §493.003(b), which establishes the Judicial Advisory Council; and §509.003, which gives the Board of Criminal Justice authority to adopt reasonable rules establishing minimum standards for the operations and programs of community supervision and corrections departments.

Cross-Reference to statute: Government Code §493.003 and §509.003.

§161.21. Role of the Judicial Advisory Council.

(a) Policy. The Texas Board of Criminal Justice (board) acknowledges the judiciary's statutory responsibility and the valuable and critical role of the judiciary in the growth, development, and implementation of community corrections policies and programs in Texas. The Judicial Advisory Council (council) is intended to provide a structure for fulfilling that role.

(b) (No change.)

(c) Local-Level Role of the Council. In addition to the duties set out in subsection (b) of this section, the council shall:

(1) (No change.)

(2) coordinate its activities with the community justice liaison member of the board, the director of TDCJ-CJAD, the local community supervision and corrections departments (CSCDs), and any other significant entities identified by the director of TDCJ-CJAD or the executive director of the department; and

(3) provide a forum for exchange of information and a dialogue with the network of local CSCDs [~~community supervision and corrections departments~~] on matters involving community corrections programs.

(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 February 12, 2002.

TRD-200200868
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 463-9693

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

37 TAC §429.5, §429.7

The Texas Commission on Fire Protection (TCFP) proposes changes to §429.5 and §429.7, concerning minimum standards for intermediate and advanced fire inspector certifications. The changes add a fourth option for meeting course requirements for each certification.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state or local governments.

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 an increase in the number of eligible applicants for advanced certifications.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions, and Texas Government Code, §419.032, which provides the TCFP with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022, is affected by the proposed amendments.

§429.5. Minimum Standards for Intermediate Fire Inspector Certification.

(a) Applicants for Intermediate Fire Inspector Certification must complete the following requirements:

(1) (No change.)

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

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

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in §429.5(d).

(b) - (d) (No change.)

§429.7. Minimum Standards for Advanced Fire Inspector Certification.

(a) Applicants for Advanced Fire Inspector certification must complete the following requirements:

(1) (No change.)

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

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

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b) - (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 February 14, 2002.

TRD-200200939
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

SUBCHAPTER G. RESOURCES

40 TAC §3.704

The Texas Department of Human Services (DHS) proposes to amend §3.704, concerning types of resources, in its Texas Works chapter. The purpose of the amendment is to allow an exclusion of $15,000 of the fair market value of one motor vehicle owned by a Temporary Assistance for Needy Families-State Program (TANF-SP) family. DHS also proposes to apply the policy to two-parent families who apply for the Medically Needy Program. The amendment also allows the same exclusion for determining Food Stamp Program eligibility. In addition, the deletion of State Welfare Reform Control Group language in §3.704(b)(9) is a result of the Achieving Change for Texans (ACT) waiver expiration on March 31, 2002. The removal of control groups will create consistency by making the same TANF policy applicable to all TANF applicants and recipients after April 1, 2002.

James R. Hine, Commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of $530 in fiscal year (FY) 2002, $0 in FY 2003, $0 in FY 2004, $0 in FY 2005, and $0 in FY 2006. There will be no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Hine also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rule will be that eligible families will be allowed to retain reliable transportation, which is essential for working families. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the section applies to eligibility requirements for two-parent TANF, Medically Needy Program, and Food Stamp Program clients, not the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is also no probable effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438-2909 in DHS's Texas Works Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-050, 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, DHS 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 amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001 - 31.030.

§3.704. Types of Resources.

(a) (No change.)

(b) Temporary Assistance for Needy Families (TANF). Exclusions from resources in TANF are:

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

(9) Liquid resources. DHS excludes liquid resources resulting from earned income of a child as specified in Human Resources Code §31.0031[~~, for clients who are not members of the State Welfare Reform Control Group described in §3.6004 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility)~~].

(10) - (15) (No change.)

(16) Vehicles used for transportation.

[~~(A) For clients who are members of the State Welfare Reform Control Group described in §3.6004 of this title, (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014,~~

~~Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility), DHS exempts the value of one vehicle owned and used by the certified group for transportation if the equity is less than $1,500. If the equity exceeds $1,500, DHS counts the excess as a resource. DHS counts the equity of all other vehicles.]~~

[~~(B)~~] For TANF State Program (TANF-SP) families, DHS exempts up to $15,000 of the fair market value of one countable vehicle owned by an applicant family. For all other TANF clients, DHS exempts licensed vehicles as specified in Human Resources Code §31.032(d)(2).

(17) (No change.)

(c) (No change.)

(d) Food stamps. Exclusions from resources for food stamps are those stipulated in the Food Stamp Act of 1977 as amended by Title VIII, Section 810 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. DHS excludes up to $15,000 of the fair market value of one countable vehicle in determining eligibility for the Food Stamp program.

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

Filed with the Office of the Secretary of State on February 12, 2002.

TRD-200200884
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER E. CONSUMER-MANAGED PERSONAL ASSISTANCE SERVICES

40 TAC §48.2619

The Texas Department of Human Services (DHS) proposes to amend §48.2619, concerning reimbursement methodology for Consumer-Managed Personal Assistance Services (CMPAS), in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to establish the reimbursement methodology for the CMPAS program. The reimbursement methodology details the cost reporting requirements for providers and details the payment rate determination guidelines. In addition, DHS is changing the name of subchapter E to "Consumer-Managed Personal Assistance Services."

James R. Hine, Commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Hine also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adoption of the proposed amendment will be to make the reimbursement methodology for the CMPAS program available to the public. The reimbursement methodology details the cost reporting requirements for providers and details the payment rate determination program. There will be no effect on small or micro businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There will be no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 438-4057 in DHS's Rate Analysis section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-078, 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.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Human Resources Code, §§22.001 - 22.030.

§48.2619. Reimbursement Methodology [~~Cost Reporting Guidelines~~] for [~~the~~] Consumer-Managed Personal Assistance Services (CMPAS) [~~Program~~].

(a) General requirements. The Texas Department of Human Services (DHS), or it's designee, applies the general principles of cost determination, as specified in §20.101 of this title (relating to Introduction).

(b) Cost reporting. Providers must follow the cost-reporting guidelines as specified in §20.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). All contracted providers must submit a cost report, unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received, at the address on the cover of the cost report, before the due date of the cost report.

(c) Guidelines for desk reviews and field audits. Guidelines for desk review of cost reports are specified in §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Desk reviews or field audits are performed on all contracted providers. The frequency and nature of the field audits are determined to ensure the fiscal integrity of the program. Providers will be notified of the results of a desk review or field audit in accordance with §20.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §20.110 of this title (relating to Informal Reviews and Formal Appeals). The reimbursement authority is specified in §20.101 of this title (relating to Introduction).

(d) Factors affecting allowable costs.

(1) Guidelines in determining allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §20.102 of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Guidelines for allowable and unallowable costs. Providers must follow the guidelines for allowable and unallowable costs as specified in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(3) Exclusion of certain reported expenses and cost reports.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. Unallowable expenses included in the cost report are excluded from reimbursement determination and appropriate adjustments are made to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for compilation of provider cost profiles if:

(i) there is doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from the database used for compilation of provider cost profiles for the reason stated in subparagraph (B)(i) of this paragraph.

(e) Reimbursement determination. Reimbursement per hour of service is determined for each individual contracted provider by its DHS contract manager. The reimbursement determination is based upon estimated costs reported by the contracted provider for the effective reimbursement period and upon historical information reported by the contracted provider in the form of annual cost reports covering the provider's fiscal year. Comparisons of each provider's individual cost profiles per unit of service from prior years, as well as comparisons with mean and weighted median cost profiles per unit of service across all providers, may be used by the DHS contract manager in the reimbursement determination process.

(1) Cost areas. Allowable costs, reported or estimated, are combined into five cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Assessors of need cost area. This cost area collects costs and statistics associated with assessors of need, including salaries, travel expenses, training costs, and contracted expenses.

(B) Attendant recruitment and orientation cost area. This cost area collects costs and statistics associated with persons recruiting and orienting attendants, including salaries, travel expenses, training costs, contracted expenses, and advertising costs for attendant recruitment.

(C) Attendants cost area. This cost area collects costs and statistics associated with regular and substitute attendants, as well as on-call staff, including salaries, travel expenses, training costs, universal health and safety costs, and other miscellaneous costs.

(D) Building and transportation cost area. This cost area collects building and building equipment expenses, departmental equipment expenses, and transportation equipment expenses.

(E) Administration cost area. This cost area collects administrative salaries, office expenses, and central office overhead expenses.

(2) Projected costs. Allowable expenses are projected, excluding depreciation and mortgage interest, per hour of service from each provider's reporting period to the next ensuing reimbursement period. Reasonable and appropriate economic adjusters are determined as described in §20.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Reimbursement may also be adjusted where new legislation, regulations, or economic factors affect costs as specified in §20.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(3) Provider cost profiles.

(A) Individual provider cost profile per unit of service. To determine a provider's individual cost profile, a cost component is determined for each cost area in paragraph (1)(A) - (E) of this subsection by dividing either the total reported or the total projected allowable costs for the cost area by the total units of service provided. The sum of the five cost components is the provider's individual reported or projected cost per unit of service.

(B) Mean cost profile per unit of service across all providers. To determine the mean cost profile across all providers submitting cost reports, the results from subparagraph (A) of this paragraph for each provider are taken and a mean (average) is calculated for each cost area. The sum of the mean cost area components is the mean cost profile (reported or projected) per unit of service across all providers.

(C) Weighted median cost profile per unit of service across all providers. To determine the weighted median cost profile across all providers submitting cost reports, all providers' (reported or projected) cost per hour of service is rank-ordered, from low to high, in each cost area. The hours of service for each provider that correspond with each cost array are summed until the median hour of service is reached, resulting in a weighted median cost area component. The sum of the five weighted median cost area components is the weighted median cost profile per unit of service across all providers.

(f) Reporting revenues. Revenues must be reported on the cost report in accordance with §20.104 of this title (relating to Revenues).

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 February 12, 2002.

TRD-200200870
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §§57.3, 57.42, 57.56

The Automobile Theft Prevention Authority (ATPA) proposes amendments to §§57.3, 57.42, and 57.56. The proposed amendments update the reference to the ATPA's address and telephone number in §57.3 and §57.42 and change the date the board's advisory committees will be abolished in §57.56. The Government Code §2110.008 requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law. The proposed amendment to §57.56 changes the date to August 31, 2006. Adoption of this proposal will act as the Authority's approval of the continuation of these committees.

Susan Sampson, Director of the ATPA, has determined that for the first five-year period the amendments are in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Sampson also has determined that the public benefit anticipated as a result of the proposed amendments will be better notice to the public as to the Authority's physical location and telephone number and the continuation of its advisory committees, which assist the Authority in its mission to prevent and reduce auto theft. There will be no economic effect on micro or small businesses. 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 Susan Sampson, Acting Director, Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779-0001, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendments: §57.3 and §57.42--Article 4413(37), §6(a); §57.56--Article 4413(37), §6(a), Government Code §2110.008.

§57.3. Compliance; Adoption by Reference.

Grantee/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The ATPA adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779, (512) 374-5101 [~~200 East Riverside Drive, Austin, Texas 78704, (512) 416-4600~~]:

(1) - (6) (No change.)

§57.42. Grantee's Response to Audit Exceptions.

(a) (No change.)

(b) A grantee may submit documentation, either in person or by mail, to the Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779, [~~200 East Riverside, Austin, Texas 78704,~~] Attention: Director.

§57.56. General Requirements for Advisory Committees.

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

(1) - (5) (No change.)

(6) Each committee is abolished on August 31, 2006 [~~August 31, 2002~~], unless the ATPA amends this paragraph to establish a different date.

(7) (No change.)

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

Filed with the Office of the Secretary of State on February 12, 2002.

TRD-200200875
Susan Sampson
Director
Automobile Theft Prevention Authority
Earliest possible date of adoption: March 31, 2002
For further information, please call: (512) 374-5101

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WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 5. GENERAL SERVICES COMMISSION

CHAPTER 125. SUPPORT SERVICES DIVISION--TRAVEL AND VEHICLE

SUBCHAPTER A. TRAVEL MANAGEMENT SERVICES

1 TAC §125.28

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the General Services Commission has been automatically withdrawn. The new section as proposed appeared in the August 17, 2001 issue of the *Texas Register* (26 TexReg 6075).

Filed with the Office of the Secretary of State on February 19, 2002.

TRD-200200996

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TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 105. ADVERTISING RULES

16 TAC §105.10

The Texas Motor Vehicle Board has withdrawn from consideration proposed amendment to §105.10 which appeared in the November 9, 2001, issue of the *Texas Register* (26 TexReg 8969).

Filed with the Office of the Secretary of State on February 15, 2002.

TRD-200200976
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: February 15, 2002
For further information, please call: (512) 416-4899

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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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.2

The State Securities Board adopts an amendment to §115.2, concerning application requirements, without changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10197).

The amendment eliminates a reference to a form that is being concurrently repealed and corrects a cross-reference.

The amendment eliminates an unnecessary filing requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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 February 14, 2002.

TRD-200200934
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: March 6, 2002
Proposal publication date: December 14, 2001
For further information, please call: (512) 305-8300

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.1, §116.2

The State Securities Board adopts amendments to §116.1 and §116.2, concerning investment advisers and investment adviser representatives, without changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10198).

The amendments conform definitions of terms used in Chapter 116 to those added to the Texas Securities Act by House Bill 2255, eliminate a reference to a form that is being concurrently repealed, and correct a cross-reference.

The amendments use terminology consistently and eliminate an unnecessary filing requirement.

A comment on the proposal was received from the Investment Company Institute. The commenter suggested that federal covered investment advisers be excluded from the definition of "investment adviser" in §116.1. The staff disagreed and explained that it is a matter of interpretation, adding that the proposed definition tracks the definition recently added to the Texas Securities Act by the Texas Legislature. The Board adopted the rule as proposed.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

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CHAPTER 133. FORMS

7 TAC §133.23

The State Securities Board adopts the repeal of §133.23, a form concerning franchise tax certification for corporate applicants, without changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10199).

The amendment eliminates a form that is no longer required. Article 2.45 of the Texas Business Corporation Act, which required the agency to obtain a representation concerning franchise taxes, was repealed during the recent legislative session by House Bill 2914.

The amendment eliminates an unnecessary form.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.2, §111.18

The Texas Motor Vehicle Board adopts amendments to §111.2, General Distinguishing Numbers, Definitions, and new §111.18, Proof of Valid License Required of Foreign Motor Vehicle Dealers, as published in the November 9, 2001 issue of the *Texas Register* (26 TexReg 8975). Section 111.18 is adopted with changes. Section 111.2 is adopted without changes and will not be republished.

The amendments and new section require Texas licensees to require proof of licensure from persons claiming to hold a license in a foreign jurisdiction, to identify and keep copies of certain license records pertaining to Mexican motor vehicle dealers with whom they do business, and to affix a "For Export Only" stamp with the selling dealer's General Distinguishing Number on the title of every vehicle sold to a foreign motor vehicle dealer.

A significant number of vehicles in Texas are sold to persons claiming to be foreign licensed dealers and who represent that the vehicles are purchased for export when the vehicles are actually not taken out of the country, but are "curbstoned" or sold in unlicensed and unregulated lots near the border with Mexico. These lots compete unfairly with licensed and regulated dealers, who must make a significant investment in facilities and inventory. Additionally, consumers have no recourse against such dealers, who do not meet license requirements such as maintaining a security bond or a permanent place of business. These rules are designed to reduce or eliminate the supply of vehicles to unlicensed dealers by requiring Texas licensees to obtain proof that the international dealer is, in fact, licensed in his or her home nation. They will also assist local law enforcement by reducing the number of curbstoners in the border communities.

Additionally, the rules support the efforts of other nations to require licensing of their dealer bodies. By restricting access to a steady supply of American vehicles to those who have obtained licenses from their governments to sell vehicles, Texas will provide a strong incentive for would-be dealers to meet the requirements for licensing.

The rules specifically require certain documents from dealers claiming to be licensed by the Republic of Mexico. The Board supports Mexico's requirements by requiring Texas dealers to maintain copies of appropriate documents and to verify that the Mexican dealer's license is active and in good standing. The Board's position is based on the special relationship that exists between Texas and the Republic of Mexico. Texas and Mexico share a long border, where both sides have developed a highly integrated economy. Texas supports the Republic of Mexico in its efforts to limit the trade in motor vehicles to licensed dealers, and to that end the Motor Vehicle Board proposes specific requirements concerning Mexican motor vehicle dealers. The more general requirements are intended for all non-United States dealers.

Proponents of the proposal commented that adoption will increase tax revenues and help eliminate curbstoning. Reduction of curbstoning will help eliminate unfair competition by curbstoners, who have no overhead costs, against small businesses in the border communities and help protect consumers against gypsy salespersons who do not transfer titles and cannot be located after the sale. The proposed rule will also greatly reduce unlicensed sales of motor vehicles. Commenters stated that the requirement of stamping titles would reduce illegal sales within the United States and in Mexico because only a licensed dealer would be able to sell the vehicles without titling them in the dealer's name. A consumer would be alerted by the title stamp that the vehicle was sold for export only. An auto auction commented that they were already following the proposed procedures, and did not find them burdensome.

Small businessmen stated that they are losing money to curbstoners, and noted that there are 120 legitimate businessmen in Brownsville and 1,000 curbstoners who do not pay taxes, have overhead or the expense of permanent facilities.

Opponents argued that the rule would be overly costly and burdensome for dealers, without achieving the purpose of reducing curbstoning. Commenters stated that the burden of requiring dealers to verify the license status from all foreign dealers would outweigh the benefit of a minor reduction in unlicensed sales. Additionally, it was asserted that the rule gave no guidance on how dealers would verify foreign licenses from countries other than Mexico. One commenter suggested it would not be difficult to wash the title in another state, thereby defeating the purpose of the rule. Another argued that the proposal would not accomplish its purpose, but create another layer of bureaucracy and opportunity for innocent mistakes.

Comments in favor of §111.18 were received from Rene O. Oliveira, Chairman of the House Ways and Means Committee, and the Tax Assessor-Collectors of Cameron, El Paso, Hidalgo and Webb Counties, the Cameron County Commissioners Court, the Brownsville Used Car Dealer Association, the El Paso Independent Automobile Dealers' Association, the San Antonio Auto Auction, and independent businessmen.

Comments in opposition to the proposal were received from the Texas Automobile Dealers Association, the Texas Independent Automobile Dealers Association, the Texas Wholesale Auto Auction Association, and Copart Salvage Auto Auction.

The Board agreed with comments that §111.18(c)(2), requiring auctions and dealers to telephonically confirm a buyer's license status with the Mexican licensing authorities, would be impractical and overly burdensome, and deleted that section. The Board further agreed that the wording of proposed §111.18(c)(4) was incorrect and should be changed to correctly identify the "Texas Motor Vehicle Sales Tax Exemption Certificate For Vehicles Taken Out of State" instead of "Texas Motor Vehicle Sales Tax Resale Certificate". The Board disagreed that the burden of requiring dealers to otherwise verify the license status of all foreign dealers would outweigh the benefit of a minor reduction in unlicensed sales. It believes that there are ways to verify dealer licenses through international dealer associations, and that the greater good that will be achieved through adoption of the rule cannot be overlooked.

The amendments and new rule are adopted under the Texas Motor Vehicle Commission Code, §§3.01, 3.03, and 3.06, which provides the Board with authority to amend and adopt rules as necessary and convenient to effectuate the provisions of the Motor Vehicle Commission Code and Transportation Code.

Texas Transportation Code Sections 503.021, 503.036, and 503.038 are affected by the proposed amendments and new rule.

§111.18 Proof of valid license required of foreign motor vehicle dealers.

(a) All holders of General Distinguishing Numbers must verify that a foreign motor vehicle dealer holds a valid license from the foreign dealer's country of origin before permitting the foreign motor vehicle dealer to purchase vehicles.

(b) All auctions or dealers who sell a vehicle to a foreign motor vehicle dealer shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their General Distinguishing Number. The stamp shall also be placed on the front of the title in a manner that does not obscure any names, dates, or mileage statements. The stamp must be at least two inches wide, and all words must be clearly legible.

(c) Where the purchaser is a Mexican motor vehicle dealer or the agent of a Mexican motor vehicle dealer the following documents must be obtained prior to the sale and maintained in the sales file for each vehicle:

(1) A copy of the Republic of Mexico license issued by the Secretaria de Economia to the Mexican Motor Vehicle Dealer;

(2) A copy of identification documents issued by the Republic of Mexico indicating that the person claiming to be a Mexican dealer is, in fact, a resident of Mexico. Such documents include but are not limited to Mexican driver's licenses, voter registration documents, or official identification cards, if the card contains a picture of the person and lists a physical address;

(3) A completed Texas Motor Vehicle Sales Tax Exemption Certificate For Vehicles Taken Out of State for each vehicle sold to a Mexican dealer, indicating that the vehicle has been purchased for export to the Republic of Mexico; and

(4) A copy of the front and back of the title to the vehicle, showing the "For Export Only" stamp and the General Distinguishing Number of the auction or dealer;

(5) In the case of agents of Mexican motor vehicle dealers, the file must contain copies of the listed documents for the dealer and documentation supporting the person's claim to be acting as an agent for an Mexican motor vehicle dealer.

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 February 15, 2002.

TRD-200200980
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: March 7, 2002
Proposal publication date: November 9, 2001
For further information, please call: (512) 416-4899

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF THE STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305, §401.312

The Texas Lottery Commission adopts amendments to 16 TAC §401.305 and §401.312 relating to the Lotto Texas and Texas Two Step on-line game rules with changes to the proposed text as published in the December 21, 2001 issue of the *Texas Register* (26TexReg10465). The change is in response to comment received that the language regarding the direct prize category contribution for the Lotto Texas first prize (jackpot) does not set

a minimum amount. Specifically, the change clarifies the Commission's intent to pay no less than 68.24% of the prize pool in the direct prize category for the Lotto Texas first prize.

The amendments provide for the payment of the greater of the advertised jackpot amount or the jackpot amount based on sales determined in part by the applicable interest rate factor; and, definitions of "advertised jackpot", "annual payment option", and "jackpot amount". The amendments also delete language that provides that no prize amount shall be less than $5.00. While the 3 of 6 prize pays a guaranteed $5.00, it is statistically possible, albeit a remote possibility, that the 4 of 6 prize category could pay less than $5.00 because of the pari-mutuel nature of that prize category. Therefore, the Commission deletes the language in the rule. The amendments, in part, also eliminate redundant, confusing, or obsolete language and update the rules to current agency practice. Additionally, the Commission received a comment prior to undergoing this rulemaking in which the commenter suggested the Commission reconsider the wording "cash value option" and instead use the phrase "net present cash value" in the "Lotto Texas" rule. The Commission agrees with the commenter and adopts new language as a definition for "net present cash value option". With regard to Texas Two Step, the amendments also allow players to claim prizes up to $999,999 at claims centers, clarify what numbers selected by the player must match the numbers drawn to win a prize, and more accurately describe how the advertised jackpot is determined.

The amendments make the rules consistent with existing law and clarify current agency practices and procedures relating to the game rules. Additional amendments to the "Lotto Texas" and "Texas Two Step" rules relating to the advertised jackpot make clear that the Commission will pay the advertised jackpot amount or, in the case of "Lotto Texas", the net present cash value of the advertised jackpot amount, depending on the payment option and consistent with the provisions of the rule. The amendments also define the phrase "advertised jackpot" to mean the jackpot amount the Commission establishes for each drawing and the amount the Commission authorizes its vendors to publicize. The amendments also include a definition of "annual payment option" so players will have a better understanding of the meaning of this term at the time the player is making his/her purchase.

The Commission believes that Lotto Texas rule amendment relating to paying the greater of the advertised jackpot amount or the jackpot amount based on sales determined in part by the applicable interest rate factor benefits the players and makes clear to the players as to what the Commission will pay in connection with the First Prize.

Government Code §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature (1999), requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). 16 TAC Chapter 401 has been reviewed in its entirety and the Commission determined that reasons for adopting certain sections continue to exist. The certain sections that have been readopted pursuant to Commission Order No. 00-0004, dated January 28, 2000, are set out in Exhibit "A" to the Order. The notice of the proposed rule review was published in the November 12, 1999 issue of the *Texas Register*, (24 TexReg 10149). No comments were received regarding the agency's rule review of Chapter 401. This rulemaking relating to the "Lotto Texas" On-Line Game rule is consistent with and, in part, the result of the agency's rule review.

Written comments were received. The Commission conducted a hearing to receive comment on the proposed amendments. The hearing was properly noticed for January 9, 2002 at 9:00 a.m. at the Commission auditorium, 611 E. Sixth Street, Austin, Texas. No persons attended the hearing and no comment was received at the hearing. Many of the commenters made the same comments since the comments were submitted in a "form" format. These commenters are in opposition to: "winning less than $5 for matching 4 of 6 numbers playing Lotto Texas", "the rule not stating specifically how much a 6 of 6 winner will win", "the use of the word "may" instead of "shall" when referring to the percentage due a 6 of 6 winner", "the Commission paying the amount it advertises and not guaranteeing a minimum percentage of sales that the 6 of 6 winner will receive", "the 6 of 6 prize amount not being pari-mutuel", "the Commission allocating such a high percentage of sales to the 3 of 6 prize category since it's never been needed to pay the prize", "players not receiving a minimum of 55% of sales when the rule state that players shall receive 55%", and the change to Texas Two Step that changes the direct prize category contribution of 45.56% of the prize pool for the drawing from mandatory to discretionary.

Other comments submitted by a commenter are E-mail messages to that commenter. The following is a summary of those comments and Commission response. The Commission should pay "more smaller payoffs rather than several million to one winner because a person would rather have better odds of winning $100,000 than zilch". The Commission disagrees with this comment because the Lotto Texas game is designed to have one jackpot. Other Commission games offer better odds of winning a prize, in a manner as the commenter suggests. Another commenter suggests that when a product is not selling, the price should be reduced. The commenter indicates that if the Commission removed the four balls, the odds would have improved and prizes would have increased by at least 40%. This commenter would like to share smaller prizes more often. The Commission disagrees with the comment because adding the four balls to the game produced the desired result, higher jackpots and increased sales.

One commenter suggests that the language regarding the direct prize category for the Lotto Texas jackpot amount should be based on a minimum of 68.24% of the prize pool and the language should be specific. The Commission agrees with the comment and has revised the language to clarify that the direct prize category for the Lotto Texas jackpot amount shall be no less than 68.24% of the prize pool. The commenter also objects to the deletion of the language indicating that no Lotto Texas prize shall be less than $5.00 and indicates that there should never be even a remote possibility that a Lotto Texas prize could be less than $5.00. The Commission disagrees with the comment because while the 3 of 6 prize pays a guaranteed $5.00, it is statistically possible, albeit a remote possibility, that the 4 of 6 prize category could pay less than $5.00 because of the pari-mutuel nature of that prize category. The commenter also believes the language regarding the Lotto Texas jackpot prize should not reference that the jackpot amount based on sales is determined in part by the applicable interest rate factor because the interest rate factor has no bearing on the amount allocated from sales. The Commission disagrees with the comment because the applicable interest rate factor is one of the factors used to determine the jackpot amount. The commenter also believes that the players are not receiving a minimum of 55% of Lotto Texas sales because money is withheld from the amount allocated to the players. The commenter refers to the prize reserve fund, the allocation of money to pay 3 of 6

prizes, and to the reversion of unclaimed prizes to the State after the prize claim period has expired. The Commission disagrees with the comment because the rule sets out a prize reserve fund and the amount to be allocated to the fund based on the difference between the prizes won and the direct prize category contribution for the 3 of 6 category. Likewise, should there be more 3 of 6 prizes than what is allocated, the contribution would come from the fund. The prize reserve fund is functioning as it was designed, in part, to pay 3 of 6 prizes. Additionally, unclaimed prizes have never been a part of the prize reserve fund and have not been used to supplement on-line games. The commenter believes that deleting language from the prize reserve fund provision of the Lotto Texas game rule is intended to allow the Commission to place excess funds from the 6 of 6 prize monies into the fund. The Commission disagrees with the comment because there will be no excess funds from the 6 of 6 prize category. The purpose of deleting the language from the prize reserve provision is have the fund function consistent with the rule changes. For example, if the advertised jackpot amount is greater than the jackpot amount based on sales, the monies in the fund will supplement the 6 of 6 prize. The commenter also believes that the Texas Two Step jackpot direct prize category provision language should be mandatory and not discretionary. The Commission disagrees with the comment because the Texas Two Step jackpot is an advertised jackpot. The Commission pays the amount advertised, not the amount based on sales. The jackpot prize category contribution must have the flexibility to pay above or below the percentage of the prize pool for the drawing in order to pay the advertised amount. The commenter also suggests that the Commission underestimated the January 1, 2002 Texas Two Step jackpot because the commenter believes sales are down and the Commission needed the extra money to help offset the "starting $200,000 jackpot". The commenter believes that the Commission needed the money because the prize pool for the draw only had $187,000 in the pool to pay the winner. The Commission is not intentionally underestimating the jackpot amount. The Texas Two Step game was designed to pay the advertised amount. The Commission tries to be as accurate as possible when estimating the jackpot amount and the Commission has procedures it follows to estimate the jackpot as accurately as possible.

One commenter wants the Commission to pay the "actual amount" of the Lotto Texas jackpot, not the advertised amount. The Commission disagrees with the comment because the jackpot amount to be paid will be the greater of the advertised jackpot amount or the amount based on sales. Therefore, the player will always be benefited by the rule change. The commenter suggests the games be "proper pari-mutual games". The commenter also wants the unclaimed prizes to roll into the prize reserve fund. The commenter wants the number of games played to change to eliminate some of the competition for dollars. The commenter believes the Commission doesn't listen to the players and that has caused a lack of faith in the lottery. The commenter wants the Commission to make staff changes. The Commission disagrees with the comment that all games should be pari-mutuel. Each game is designed to respond to different player interests. Not all players want pari-mutuel games. The Commission must respond to its market. Further, prior to introducing a new game, the Commission researches game ideas and designs and tests ideas and designs through player research. The number of games played is also introduced to player groups. Once the Commission gathers and analyzes its research results, it introduces the games, including the frequency of a game in a period of time. The Commission listens to its players and responds to market demands constantly.

One group or association, The Lotto Report, is opposed to the rule amendments.

The amendments are adopted under Government Code, Section 466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments, repeal, and new rules affect Government Code, Chapter 466.

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

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

(b) Definitions. In addition to the definitions provided in §401.301of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot-The jackpot amount the commission establishes for each Lotto Texas drawing and authorizes commission vendors to publicize. The advertised jackpot or share of the advertised jackpot is the amount the commission may pay as the annual payment option in 25 annual payments consistent with the provisions of this rule. The advertised jackpot is determined by the indirect prize category and by estimating the direct prize category and may be increased prior to the draw by the commission based on sales projections.

(2) Annual payment option-The option selected if the player elects at the time the player purchases a ticket or if the player makes no election at the time the player purchases the ticket. The option is to be paid the jackpot amount in 25 annual payments, in the event the player has a valid winning jackpot ticket and consistent with the provisions of the rule.

(3) Jackpot amount-The greater of either the advertised jackpot or the jackpot based on sales determined in part by the applicable interest rate factor. The amount actually paid will either be a winner's share of the net present cash value of the jackpot amount or a winner's share of the jackpot amount, depending on the payment option and consistent with the provisions of the rule.

(4) Net Present Cash value option--An election a player makes at the time the player purchases a ticket to be paid the net present cash value of the player's share of the jackpot amount, in the event the player has a valid winning jackpot ticket. The net present cash value is the cost that the Comptroller of Public Accounts informs the commission is the cost to purchase a 25-year annuity on the first business day after the drawing. The term "net present cash value option" is synonymous with the terms "cash value option", "cash option", and "net present value".

(5) Number--Any play integer from one through 54 inclusive.

(6) Play--The six numbers selected on each play board and printed on the ticket.

(7) Play board--A field of the 54 numbers found on the playslip.

(8) Playslip--An optically readable card issued by the commission used by players of Lotto Texas to select plays. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Lotto Texas play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Lotto Texas.

(1) Type of play. A Lotto Texas player must select six numbers in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when three, four, five, or six of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

(2) Method of play. The player may use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Lotto Texas.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Lotto Texas player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the fourth prize, which is a guaranteed $5.00. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage, with the exception of the fourth prize breakage, will carry forward to the next drawing for each respective prize category. The fourth prize category breakage will be placed in the reserve fund. The pari-mutuel prize amounts, except the jackpot prize amount, are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category. The jackpot amount will be the greater of either the advertised jackpot or the jackpot based on sales determined in part by the applicable interest rate factor. The amount actually paid will either be a winner's share of the net present cash value of the jackpot amount or a winner's share of the jackpot amount, depending on the payment option and consistent with the provisions of the rule.
Figure: 16 TAC §401.305(e)(1)

(2) Prize pool. The prize pool for Lotto Texas prizes shall be a minimum of 55% of Lotto Texas sales.

(3) Prize categories.

(A) First prize (jackpot).

(i) In the event of a prize winner who does not select the net present cash value option, the prize winner's share of the jackpot amount shall be paid in 25 installments. To determine the annuitized future value of each share (prize amount), the annuitized future value of the jackpot amount is divided by the shares. A share is the matching combination, in one play, of all six numbers drawn by the commission (in any order). Each share will be paid in 25 installments. The initial payment shall be paid only upon completion of all internal validation procedures. The subsequent 24 payments shall be paid annually by monies generated by the purchase of securities which shall be purchased through the Comptroller of Public Accounts-Treasury Operations, State of Texas, after each drawing for which lottery records reflect the sale of one or more winning Lotto Texas six of six plays, and the value of the 24 installments shall be determined by the face or market value of said securities at purchase. Annual installment payments shall be based on the annual maturity value of the securities purchased. The payment of annual annuities will be made on the 15th day of the anniversary of the month in which the ticket won. If the net present cash value of each share is equal to or greater than the amount required to pay an initial first-year cash installment and 24 subsequent annuitized annual installments yielding total payments greater than $2 million, each share shall be paid in 25 installments in the same manner as described in this paragraph. If the net present cash value of each share is less than the amount required to pay an initial first-year cash installment and 24 subsequent installments yielding total payments of $2 million or less, each share shall be paid the net present cash value of each share in one payment.

(ii) In the event of a prize winner who selects the net present cash value option, the prize winner's share will be paid in a single, lump sum payment based on the discounted, net present cash value of the prize winner's share of the jackpot amount on the next business day after the drawing. The player must make the election of the net present cash value option at the time of purchasing a Lotto Texas ticket. If the player does not make any election at the time of purchasing a Lotto Texas ticket, the share will be paid in accordance with clause (i) of this subparagraph.

(iii) The six of six jackpot prize must be claimed at the Austin claim center. The jackpot amount is determined by the indirect prize category and by estimating the direct prize category. The total prize category contribution for a drawing will include the following.

(I) The direct prize category contribution shall be no less than 68.24% of the prize pool for the drawing.

(II) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(III) The commission will pay the greater of either the advertised jackpot or the jackpot based on sales determined in part by the applicable interest rate factor. The amount actually paid will either be a winner's share of the net present cash value of the jackpot amount or a winner's share of the jackpot amount, depending on the payment option and consistent with the provisions of the rule.

(B) Second Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the six numbers drawn by the commission (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 5.07% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage and/or roll-over from the previous drawing, if any.

(C) Third prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the six numbers drawn by the commission (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 12.51% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage and/or roll-over from the previous drawing, if any.

(D) Fourth prize. The prize amount is a guaranteed minimum $5.00. The difference between the prizes won and the direct prize category contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 12.18% of the prize pool for the drawing.

(4) Prize reserve fund.

(A) The Lotto Texas prize reserve is 2.0% of the prize pool.

(B) The Lotto Texas prize reserve fund may be increased or decreased by paying Lotto Texas prizes. The Lotto Texas prize reserve fund may be used only for the Lotto Texas game.

(f) Ticket purchases.

(1) Lotto Texas tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Lotto Texas tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, boards played, drawing date, jackpot payment option, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Lotto Texas tickets must be purchased using official Lotto Texas playslips. Playslips which have been mechanically completed are not valid. Lotto Texas tickets must be printed on official Texas lottery paper stock and purchased at a licensed location through an authorized Texas lottery retailer's on-line terminal.

(g) Drawings.

(1) The Lotto Texas drawings shall be held each week on Wednesday and Saturday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) Lotto Texas tickets will not be sold during the draw break for the Lotto Texas game on Wednesday and Saturday nights.

(3) The drawings will be conducted by lottery officials.

(4) Each drawing shall determine, at random, six winning numbers in accordance with Lotto Texas drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Lotto Texas winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one commission security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the commission.

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

§401.312. "Texas Two Step" On-line Game.

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

(b) Definitions. In addition to the definitions provided in §401.301, and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The jackpot amount the commission establishes for each Texas Two Step drawing and authorizes commission vendors to publicize.

(2) Number--Any play integer from 1 through 35 inclusive.

(3) Play--The five numbers selected on each play board and printed on the ticket. Four numbers are selected from the first field of 35 numbers and one number is selected from the second field of 35 numbers.

(4) Play board--Two fields of 35 numbers each found on the playslip.

(5) Playslip--An optically readable card issued by the commission used by players of Texas Two Step to select plays. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Texas Two Step play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Texas Two Step.

(1) Type of play. A Texas Two Step player must select four numbers from the first field of numbers from 1 through 35 and an additional one number from the second field of numbers from 1 through 35 in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when three or four numbers selected from the first field of 35 numbers match, in any order, the four numbers drawn from the first field of 35 numbers in addition to matching either zero or one number drawn from the second field of 35 numbers or when zero, one or two numbers selected from the first field of 35 numbers match, in any order, the four numbers drawn from the first field of 35 numbers in addition to matching the one number drawn from the second field of 35 numbers.

(2) Method of play. The player may use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available or if a player is unable to complete a playslip, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as Quick Pick.

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning number drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for Texas Two Step.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Texas Two Step player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the sixth and seventh prize, which are guaranteed prizes of $7.00 and $5.00, respectively. The calculation of pari-mutuel prize categories 2 through 5 shall be rounded down so those prizes can be paid in multiples of whole dollars. Each prize category breakage will carry forward to the next drawing for each respective prize category. The prize amounts, except the First prize (jackpot), are based on the total amount in the prize category for that Texas Two Step drawing distributed equally over the number of matching combinations in each prize category.
Figure: 16 TAC 401.312 (e)(1)

(2) Prize pool. The prize pool for Texas Two Step prizes shall be a minimum of 50% of Texas Two Step sales.

(3) Prize categories.

(A) First prize (jackpot) - The prize winner's share of the first prize or advertised jackpot is won by matching all four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers. The jackpot share (prize amount) shall be calculated by dividing the advertised jackpot by the number of shares for the prize category. Each first prize or jackpot share will be paid in one lump sum payment. The first prize or jackpot share of $600 to $999,999 must be claimed at a commission claim center. First prize or jackpot share of $1,000,000 or larger must be claimed at the commission headquarters in Austin. The advertised jackpot is determined by the indirect prize category and by estimating the direct prize category. The total prize category contribution for a drawing will include the following.

(i) The direct prize category contribution may be 45.56% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the roll-over from the previous drawing, if any.

(iii) The commission will pay the advertised jackpot amount for Texas Two Step. If the direct and indirect prize category contributions are greater than the advertised jackpot amount, the difference will be added to the Texas Two Step prize reserve fund and will be used for future Texas Two Step jackpot prizes. If the direct and indirect prize category contributions are less than the advertised jackpot amount, the difference will be taken from the Texas Two Step prize reserve fund to fund the advertised jackpot amount.

(B) Second Prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of all four numbers drawn (in any order) from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 5.57% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(C) Third prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of three of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 0.68% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(D) Fourth prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of three of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 9.20% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(E) Fifth prize. The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of two of four numbers drawn (in any order) from the first field of 35 numbers in addition to matching the number from the second field of 35 numbers drawn by the commission. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 6.09% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the executive director, will include the breakage from the previous drawing, if any.

(F) Sixth prize. The prize amount is a guaranteed minimum $7.00. The difference between the prizes won and the direct prize contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 13.73% of the prize pool for the drawing.

(G) Seventh prize. The prize amount is a guaranteed minimum $5.00. The difference between the prizes won and the direct prize contribution will increase or decrease the prize reserve fund. The total prize category contribution will include the direct prize category contribution of 17.17% of the prize pool for the drawing.

(4) Prize reserve fund.

(A) The Texas Two Step prize reserve fund is 2.0% of the prize pool.

(B) The Texas Two Step prize reserve fund may be increased or decreased by the difference between the first prize category's (advertised jackpot), sixth and seventh prize category prizes that are actually won and the respective prize category's share of the prize pool. The Texas Two Step prize reserve fund may be used only for the Texas Two Step game.

(f) Ticket purchases.

(1) Texas Two Step tickets may be purchased only at a licensed location from a commission retailer authorized by the lottery director to sell on-line tickets.

(2) Texas Two Step tickets shall show the player's selection of numbers or Quick Pick (QP) numbers, boards played, drawing date(s) and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Texas Two Step tickets must be purchased using official Texas Two Step playslips. Playslips which have been mechanically completed are not valid. Texas Two Step tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized commission retailer's on-line terminal.

(g) Drawings.

(1) The Texas Two Step drawings shall be held each week on Tuesday and Friday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the executive director, if necessary.

(2) Texas Two Step tickets will not be sold during the draw break for the Texas Two Step game on Tuesday and Friday evenings.

(3) The drawings will be conducted by commission officials.

(4) Each drawing shall determine, at random, five winning numbers in accordance with Texas Two Step drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Texas Two Step winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one commission security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the commission.

(h) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

This agency hereby certifies that the 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 February 14, 2002.

TRD-200200926
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: March 6, 2002
Proposal publication date: December 21, 2001
For further information, please call: (512) 344-5113

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CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §402.580

The Texas Lottery Commission adopts new rule 16 TAC §402.580, relating to the filing of bingo reports with changes to the proposed text as published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9491). The change adds language to §§402.580(c)(2) and (d)(2) and is in response to comment received. Specifically, the change eliminates ambiguity.

The new section sets out the different reports that must be filed with the Charitable Bingo Operations Division, when the reports must be filed, what information must be included in the reports, and under what circumstances an extension of time to file a report may be granted. The new section sets out the requirements of the filing of bingo reports so that licensees will be informed of the Charitable Bingo Operations Division's process and procedures in connection with the filing of bingo reports.

The agency received comments from the Bingo Interest Group and the charities that conduct bingo at River City Bingo on the proposed rule. The charities that conduct bingo at River City Bingo submitted one letter but co-signed by representatives of the following organizations: The Arc of the Capital Area, Texas Hillel Foundation, Family Eldercare, Inc., North Austin Foundation, and Project Normalization. While the charities conducting bingo at River City Bingo indicated that they believe the goal of the rule is worthy, they are in opposition to the proposed rule as proposed. The commenters suggested that the provisions of proposed §§402.580(c)(2) and (d)(2) represented a burden and increased cost of operations for the organizations conducting Charitable Bingo. However, none of the commenters submitted examples of those costs. They did suggest that the language of the rule would require that each individual officer and director of an organization receive a copy of the quarterly report. One commentor suggested that the copy of the report would have to be mailed to each officer or director. One commenter suggested that board members are fiduciaries and have a right of access to all information regarding the finances of the charitable organization and, additionally, the quarterly reports are public records. The commenter believes that each board member ought to be able to obtain whatever information they need to do the jobs for which they are responsible. The commenter suggested, as an alternative, that the Commission restate the responsibility of directors for the operations of the organization, that directors are charged with the knowledge of the organization's finances and reports, and that a director shall be promptly provided with the quarterly report upon the director's request.

The Commission disagrees with the comment that the requirements of §§402.580(c)(2) and (d)(2) are burdensome. The commenters did not provide specific examples showing how these provisions would be burdensome. Absent specific examples of the increase of cost anticipated by the commenters, the Charitable Bingo Operations Division conducted a cost benefit analysis. Generally, organizations conducting Charitable Bingo have an average of seven officers and/or directors. Assuming a copy cost of $.08 per copy, first class postage of $.34 and four quarterly reports a year, the average cost would be: 7 x $.08 (per copy) +7 x $.34 (postage) x 4 (quarters) = $11.76

The Commission disagrees with the commentors who state that $11.76 per year represents a burden or increased cost of operations for organizations conducting Charitable Bingo when the

smallest class of operations represents gross receipts of up to $25,000 per year.

An additional reason the Commission disagrees with the commenters is because there are alternative methods for complying with this provision than those suggested by the commenters. However, since the commenters interpret this provision as requiring that each officer and director must receive their own copy of the report, the Commission has revised the language to eliminate ambiguity. The revision is consistent with the commenter who suggests that the responsibility for obtaining information about the organization's finances and reports rests with the officers and directors.

The Bingo Interest Group commented on §402.580(d)(1) recommending there be a period for public comment regarding a form change and a complete explanation of the need for any information requested that does not respond directly to a statutory requirement. The Commission disagrees with the commentor that there should be a period for public comment for a form revision. The "Texas Bingo Lessor's Quarterly Report" has not been revised since it was first implemented in September 1991 due to a statutory requirement. The Division, through the Charitable Bingo website and the Bingo Bulletin, make licensees aware of any changes made to forms as a result of the implementation of new statutory and rule requirements.

The new section is adopted under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new section implements Occupations Code, Chapter 2001.

§402.580. Bingo Reports.

(a) On or before the 15th of the month prior to the end of the calendar quarter, the commission will mail the "Texas Bingo Conductor's Quarterly Reports", "Texas Lessor Quarterly Reports", and "Manufacturer/Distributor Quarterly Reports and Supplements" to its licensees.

(b) Quarterly reports and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing.

(c) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the commission or in an electronic format prescribed by the commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report must be filed with the commission on or before the 15th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(d) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the commission or in an electronic format prescribed by the commission a quarterly report stating the rental income received. The report must be filed with the commission on or before the 15th day of the month following the end of the calendar quarter regardless of whether income was received.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(e) Quarterly report for information relating to a manufacturer or distributor license.

(1) A manufacturer or distributor shall file a report on a form prescribed by the commission or in an electronic format prescribed by the commission, reflecting each sale or lease of bingo equipment, and to the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the commission regardless of whether sales or lease of bingo equipment occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(f) A manufacturer or distributor shall use the eleven digit taxpayer numbers on file with the commission when submitting information relating to the sale or lease of bingo equipment, sales of cards, sheets, pads and instant bingo. If six or more taxpayer numbers are incorrect on the report, the commission will return the report to the manufacturer or distributor for correction. If five or less taxpayer numbers are incorrect, the commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(g) Quarterly report for information relating to a system service provider license.

(1) A system service provider shall file a report on a form prescribed by the commission or in an electronic format prescribed by the commission, reflecting each sale or lease of an automated bingo system to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the commission regardless of whether a sale or lease of an automated bingo system occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(h) A system service provider shall use the eleven digit taxpayer numbers on file with the commission when submitting information relating to the sale or lease of an automated bingo system. If six or more taxpayer numbers are incorrect on the report, the commission will return the report to the system provider for correction. If five or less taxpayer numbers are incorrect, the commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(i) Failure to receive forms. The failure of a licensee to receive forms from the commission does not relieve the licensee from the requirement of filing reports and remitting prize fees or taxes as applicable on a timely basis.

(j) If a licensee fails to file a quarterly report as required by Occupations Code, Section 2001.504, the Charitable Bingo Division will mail to the licensee a letter stating the quarterly report has not been filed. The applicable penalty and/or interest is due on the amount of prize fee or rental tax that was not filed timely. The licensee must file a report with the commission even if no games were conducted or no rental tax collected.

(k) Incorrect calculation of "Texas Bingo Conductor's Quarterly Report". If the total receipts and total expenses do not total correctly, the commission will mail the conductor a letter, with a copy of the adjusted report, stating an adjustment has been made to the quarterly report. If the adjusted quarterly report is correct, the licensee will maintain the copy in its file and no further action is required. If the licensee does not agree with the adjusted quarterly report, an amended quarterly report reflecting the correct data must be submitted to the commission by the licensee.

(l) The commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee or rental tax due three times within a 12-month period.

(m) Extensions

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report or pay rental tax or prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the commission shall recognize the counties that have been identified by the Comptroller of Public Accounts.

(B) The person owing the quarterly report, rental tax or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid rental tax or prize fee does not begin to accrue until the day after the day on which the extension expires, and rental tax, prize fees, and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than 30 days for the filing of a quarterly report. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees or rental tax estimated to be due must be received by the commission postmarked on or before the due date of the quarterly report.

(B) The granting of a request is within the discretion of the Director and the licensee will be notified in five working days of the request of the decision of the Director.

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee or rental tax is paid not later than ten days from the date of the denial of the request of the extension.

(3) A request postmarked after the due date for the filing of a request will not be considered.

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

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TRD-200200906
Kimberly L. Kiplin
General Counsel
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For further information, please call: (512) 344-5113

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16 TAC §402.581

The Texas Lottery Commission adopts new rule 16 TAC §402.581, relating to interest on tax and on refund or credit without changes to the proposed text as published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9493). The new section sets out the determination of interest on delinquent prize fees or rental taxes and the treatment of interest on a refund or credit of a prize fee or rental tax. Additionally, amendments to the Texas Tax Code, as a result of SB 1321, 76th Legislature, Regular Session, provide for the settlement and collection of taxes and penalties and interest on taxes, refunds, and credits consistent with this proposed new section. The new section sets out the manner in which interest on delinquent tax is determined and the treatment of interest on a refund or credit of a prize fee or rental tax so bingo licensees will know how the agency will address the treatment of such interest.

Comments were received regarding adoption of this new section. The agency received comments from the Bingo Interest Group on the proposed rule. The Bingo Interest Group did not express support for or opposition to the proposed rule. The Bingo Interest Group suggested that the applicable rate of interest on taxes and refunds be posted on the Commission's website so that each organization does not have to find the Wall Street Journal for a given date and determine the correct interest rate. The commenter also questioned the need for the proposed rule since the commenter believe it was based on a statutory change that "occurred long ago". The Charitable Bingo Operations Division appreciates the comment suggesting that the Charitable Bingo Operations Division post the interest rate on the Commission's website. The new interest rate for 2001 was posted to the website in March 2001 and the Division will continue to update the website of the new interest rate on a yearly basis. For organizations that do not have access to a computer, the Charitable Bingo Operations Division also notifies licensees of the interest rate change through the "Bingo Bulletin" and through collection activities such as billing statements. With regard to the comment questioning the need for the rule, staff disagrees that a rule is not needed relating to interest. This rule not only states how the Division will calculate interest yearly, but how the Division will handle interest on refunds and/or credits to licensees.

The new section is adopted under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new section implements Occupations Code, Chapter 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.

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For further information, please call: (512) 344-5113

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16 TAC §402.582

The Texas Lottery Commission adopts new rule 16 TAC §402.582, relating to the waiver of penalty, settlement of prize fees, rental tax, penalty and/or interest without changes to the proposed text as published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9494).

The new section sets out the ability of the Charitable Bingo Operations Division Director to waive penalty and/or interest in connection with the payment of prize fees, rental tax, or gross receipts tax for good cause shown. The new section sets out the process and circumstances under which the Commission may waive penalty or settle prize fees, rental tax, gross receipts tax, penalty and/or interest owed under the Bingo Enabling Act so licensees will know how the agency will address waiver and/or settlement requests. The new section sets out the factors the Director will consider in determining whether to waive penalty and/or interest and the circumstances under which the Commission may settle a claim for certain types of debt owed under the Bingo Enabling Act. The purpose of the rule is to inform licensees about the process relating to the waiver of penalty settlement of prize fees, rental tax, penalty and/or interest.

No comments were received regarding adoption of this new section.

The new section is adopted under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new section implements Occupations Code, Chapter 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.

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Kimberly L. Kiplin
General Counsel
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For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 161. GENERAL PROVISIONS

The Texas State Board of Medical Examiners adopts the repeal of §§161.1-161.5 and new §§161.1-161.13, concerning general provisions, without changes to the proposed text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10718) and will not be republished.

The adoption outlines the purpose and function of the board, clarifies its organization and structure, and delineates each committee's responsibilities. The chapter is simultaneously adopted for review elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the rules.

22 TAC §§161.1 - 161.5

The repeals are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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 February 15, 2002.

TRD-200200961
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Executive Director
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Effective date: March 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-7016

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22 TAC §§161.1 - 161.13

The new sections are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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TRD-200200962

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Effective date: March 7, 2002
Proposal publication date: December 28, 2001
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CHAPTER 163. LICENSURE

22 TAC §§163.1 - 163.5, 163.9, 163.10

The Texas State Board of Medical Examiners adopts amendments to §§163.1-163.5, 163.9, and 163.10, regarding the performance and delivery of medical education, examinations, education and documentation requirements, relicensure requirements, and the use of the Federation of State Medical Board's Credentials Verification Service (FCVS), without changes to the proposed text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10722) and will not be republished.

One comment was received from the Federation of State Medical Boards. The comment was specifically regarding §163.4(a)(1). The proposed rule says "If appropriate, applicants are recommended to use the Federation Credentials Verification Service (FCVS)....." The Federation recommended that the board encourage the use of the FCVS. The Texas State Board of Medical Examiners hs decided to keep the original language.

The amendments are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: March 7, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §§171.1 - 171.7

The Texas State Board of Medical Examiners adopts amendments to §§171.1-171.7, regarding eligibility and documentation requirements of Physician in Training Permits and Visiting Professor Permits, without changes to the proposed text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10729) and will not be republished. The sections are being amended for general clean-up of the chapter.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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Executive Director
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For further information, please call: (512) 305-7016

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CHAPTER 180. REHABILITATION ORDERS

The Texas State Board of Medical Examiners adopts the repeal and new §180.1, regarding the purpose of rehabilitation orders and the factors to be considered when proposing and determining eligibility for a rehabilitation order, without changes to the proposed text as published in the December 28, 2001 issue of the *Texas Register* (26 TexReg 10737). and will not be republished.

22 TAC §180.1

The repeal is adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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22 TAC §180.1

The new section is adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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CHAPTER 181. CONTACT LENS PRESCRIPTIONS

22 TAC §§181.1 - 181.3, 181.5 - 181.7

The Texas State Board of Medical Examiners adopts amendments to §§181.1-181.3, 181.5-181.7, concerning contact lens prescriptions, without changes to the proposed text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10739) . The sections are amended for general clean-up of the chapter and to update Occupation Code cites. The rule review for this chapter is being adopted elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.4, §185.9

The Texas State Board of Medical Examiners adopts amendments to §185.4 and §185.9, regarding physician assistants not currently in active practice and reactivation of an inactive license, without changes to the proposed text as published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10740) and will not be republished.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

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

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 222. ADVANCED PRACTICE NURSES AND LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.9

The Board of Nurse Examiners adopts the repeals of §§222.1 - 222.9, concerning Advanced Practice Nurses with Limited Prescriptive Authority without changes to the proposal as published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9352). The Board met on January 24-25, 2002, and voted to repeal Chapter 222 and adopt new Chapter 222 that addresses advanced practice nurses writing prescriptions at alternate sites.

The Nursing Practice Act was amended during the 77th Legislative Session by amending the definition of professional nursing to include the performance of an act delegated by a physician under sections 157.0541 and 157.0542 of the Medical Practice Act. The amendments allow advanced practice nurses with limited prescriptive authority to sign prescription drug orders in alternate sites where the physician has delegated the authority to do so. In addition, advanced practice nurses were also granted the authority to sign prescription drug orders in sites where the Texas State Board of Medical Examiners has granted a waiver or modification of site or supervisory requirements to the delegating physician. The repeal of the current rule is necessary to effectuate these new legislative provisions that are currently in effect.

No comments were received regarding the proposed repeals.

The repeals are adopted under the authority of the Texas Occupations Code, sections 301.151 and 301.152, that authorizes the Board of Nurse Examiners to adopt and enforce rules consistent

with its legislative authority under the Nursing Practice Act, including rules relating to registered nurses approved as advanced practice nurses who exercise limited prescriptive authority.

The repeals affect the Nursing Practice Act, Texas Occupations Code §§301.152 and 301.157 as it pertains to advanced practice nursing.

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 February 14, 2002.

TRD-200200928
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: March 6, 2002
Proposal publication date: November 16, 2001
For further information, please call: (512) 305-6811

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CHAPTER 222. ADVANCED PRACTICE NURSES WITH LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.10

The Board of Nurse Examiners for the State of Texas adopts new §§222.1-222.10 relating to Advanced Practice Nurses With Limited Prescriptive Authority. Section 222.4 is adopted with changes to the proposed text as published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9352). Sections 222.1-222.3 and 222.5-222.10 are adopted without changes and will not be republished.

The Nursing Practice Act was amended during the 77th Legislative Session by amending the definition of professional nursing to include the performance of an act delegated by a physician under sections 157.0541 and 157.0542 of the Medical Practice Act. The amendments allow advanced practice nurses with limited prescriptive authority to sign prescription drug orders in alternate sites where the physician has delegated the authority to do so. In addition, advanced practice nurses were also granted the authority to sign prescription drug orders in sites where the Texas State Board of Medical Examiners has granted a waiver or modification of site or supervisory requirements to the delegating physician. The adoption of the new rules are necessary to effectuate these new legislative provisions that are currently in effect.

The Texas State Board of Pharmacy (TSBP) submitted a comment suggesting a modification of §222.4, relating to Minimum Standards for Carrying Out or Signing Prescriptions. The TSBP suggests deleting proposed subsection §222.4(c)(9)(A) and (B) and replacing it with new subsection (d). The new subsection refers advanced practice nurses to the appropriate section of the TSBP's rules relating to generic substitution. The language as originally proposed specifies the current format for indicating generic substitution. The TSBP indicates that the Texas Pharmacy Act has been amended, and the new sections of that Act will become effective June 1, 2002, necessitating an additional change to Chapter 222 at that time. The Board of Nurse Examiners agrees with the comment from the TSBP, and the adopted rule reflects a renumbering scheme and nonsubstantive change in the language for subsection §222.4. By using language that refers advanced practice nurses to current TSBP rules, the language will accurately reflect current regulation, regardless of changes to the rule.

The new rules are adopted under the authority of the Texas Occupations Code, sections 301.151 and 301.152, that authorize the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses approved, or seeking approval, as an advanced practice nurse.

The new rules affect the Nursing Practice Act, Texas Occupations Code, sections 301.152 and 301.157, as it pertains to advanced practice nursing.

§222.4. Minimum Standards for Carrying Out or Signing Prescriptions.

(a) General Provisions: The advanced practice nurse with a valid prescription authorization number:

(1) shall carry out or sign prescription drug orders for only those drugs that are:

(A) classified as dangerous drugs;

(B) authorized by Protocols or other written authorization for medical aspects of patient care; and

(C) prescribed for patient populations within the accepted scope of professional practice for the advanced practice nurse's specialty area.

(2) shall not authorize or issue prescriptions for controlled substances; and

(3) shall comply with the requirements for adequate physician supervision published in the rules of the Board of Medical Examiners relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses as well as other applicable laws,

(b) Protocols or other written authorization shall be defined in a manner that promotes the exercise of professional judgement by the advanced practice nurse commensurate with the education and experience of that person.

(1) A protocol or other written authorization:

(A) is not required to describe the exact steps that the advanced practice nurse must take with respect to each specific condition, disease, or symptom; and

(B) may state types or categories of medications that may be prescribed or contain the types or categories of medications that may not be prescribed.

(2) Protocols or other written authorization:

(A) shall be written, agreed upon and signed by the advanced practice nurse and the physician;

(B) reviewed and signed at least annually; and

(C) maintained in the practice setting of the advanced practice nurse.

(c) Prescription Information: The format and essential elements of the prescription shall comply with the requirements of the Texas Board of Pharmacy. The following information must be provided on each prescription:

(1) the patient's name and address;

(2) the name, strength, and quantity of the dangerous drug to be dispensed;

(3) directions to the patient regarding taking of the drug and the dosage;

(4) the intended use of the drug, if appropriate;

(5) the name, address, and telephone number of the delegating physician;

(6) address and telephone number of the site at which the prescription drug order was carried out or signed;

(7) the date of issuance;

(8) the number of refills permitted; and

(9) the name, prescription authorization number, and original signature of the advanced practice nurse signing or co-signing the prescription drug order.

(d) Generic Substitution: The advanced practice nurse shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to Generic Substitution.

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

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Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6811

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATIONS

22 TAC §371.1, §371.2

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.1 and §371.2, concerning Examinations. Section 371.2 is adopted with changes to the proposed text that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6532). Section 371.1 is adopted without changes and will not be republished. Changes to the proposed rule reflect non-substantive variations from the proposed amendments. The board's legal counsel has advised that the changes to the proposed rule affect no new persons, entities, or subjects other than those given notice.

The board, in proposing changes to other sections of Chapter 371 decided to go through the entire rule and make the necessary changes to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes.

The changes to the proposed rules that are adopted are as follows: In §371.2(a) the word "rules" is changed from a capital "R" to a small "r". Also in §371.2(g)(5), the phrase "Texas Occupations Code, §202 et seq" is changed to read "Texas Occupations Code, §202.001 et seq".

The amendments are being adopted to make the necessary changes needed to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes. It will allow the public to find the corresponding statute more easily.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments implement Texas Occupations Code, §202.254.

§371.2. Applicant for License.

(a) Any person who wishes to practice podiatric medicine in this state, who is not otherwise licensed under law, must successfully pass an examination given at the Board's direction pursuant to §371.11 of this title (relating to Scoring and Reporting), and complete the graduate podiatric medical education requirements as set forth herein, §371.3(f) of this title (relating to Qualifications of Applicants). One who successfully completes all the requirements for licensing as set forth in these rules and who has made payment of all applicable fees shall be awarded a valid license to practice podiatric medicine in the State of Texas for the term lawfully stipulated by and under the conditions set forth in these rules, and the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202, Subchapter F.

(b) Any person who wishes to sit for the examination, shall submit a written application on a form provided by the Board. The applicant shall verify by affidavit the information in the application. The Board may refuse to admit to the examination or grant a license to any applicant who knowingly submits false information to the Board.

(c) Applications for examination must be on the Board's application form printed in ink or typewritten, which shall be furnished by the Board staff upon request.

(d) The completed application and required supporting materials must be received by the Board staff no later than 30 days before the first day of the examination. The materials supporting the application, such as transcripts of candidates, shall be received by the Board before the examination.

(e) The filing of an application and tendering the fee to the Board staff shall not in any way obligate the Board to admit the applicant to examination until applicant has been qualified by the Board as meeting the statutory and regulatory requirements for admission to the examination for licensing.

(f) The full examination fee is $250. Only certified check, Postal Service Money Order or Express Money Order shall be accepted. No examination fee will be refunded. The examination fee must be received by the Board at least 15 days before the date the applicant is scheduled to begin the examination.

(g) Temporary License.

(1) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in an accredited graduate podiatric medical education (gpme) program under §371.3(f) for a term not to exceed the time the graduate is enrolled in said gpme program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds three years.

(2) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in a gpme program that is pending accreditation, as defined under §371.3(f) for a term not to exceed the time the graduate is enrolled in said gpme program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds four years. It shall be the sole responsibility of the applicant to ascertain the accreditation status, as defined in §371.3(f) of the applicant's gpme program.

(3) A temporary licensee granted a temporary license for the purpose of pursuing a gpme program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the gpme program in which he or she is enrolled.

(4) A temporary license granted by the Board for the purpose of pursuing a gpme program in the State of Texas shall terminate by operation of law and under these rules at the time and on the day that said temporary licensee leaves or is terminated from said gpme program. Any successive entry into a second or further gpme program shall be subject to all laws and rules and application requirements set forth herein.

(5) All temporary licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001 et seq., and subsequent amendments, including §202.153 of said Act, and Chapter 376 of this title (relating to Violations and Penalties), except that temporary licensees are not subject to any Board rules concerning continuing medical education.

(6) Prior to licensure, applicants for a temporary license must have passed both Part I and Part II of the National Board, and shall provide written documentation of passing same directly from the National Board of Podiatric Medical Examiners to the Texas State Board of Podiatric Medical Examiners.

(h) Extended Temporary License.

(1) The Agency's Executive Director may grant the holder of a current "Texas Temporary License" an "Extended Temporary License", for good cause. Good cause may include but is not limited to:

(A) The illness of the holder or a family member for whom the holder is directly or indirectly responsible.

(B) A verifiable family emergency.

(C) An additional residency training issue.

(D) Additional time needed for he result of the Texas Oral Exam to be disseminated and for a valid regular license to be issued by the Board to the holder.

(2) An Extended Temporary License is an extension of the holder's Temporary License and shall allow the holder to continue to practice podiatric medicine for up to an additional three months, with the same responsibilities, restrictions and conditions of a Temporary License as found in §371.2(g) of this section.

(3) The fee for an Extended Temporary License shall be $50 for a three month period.

(4) An Extended Temporary License may be renewed a maximum of two times to any holder of a Temporary License. The second renewal shall be granted only after and upon the agency's Executive Director's determination that appropriate "good cause" circumstances continue to exist for the re-issuance of an Extended Temporary License.

(i) Temporary Faculty License.

(1) The Board may issue a Temporary Faculty License to a qualified podiatric physician who at the time of applying for this license has accepted an appointment to, or is serving as a full-time member of the faculty of an educational institution in this state including a hospital approved podiatric residency program, a residency program pending approval, offering an approved or accredited course of study or training leading to a degree in podiatric medicine.

(2) In this subsection (i), the term "qualified podiatric physician" shall mean one who:

(A) Is a licensed podiatric physician in good standing in another state having similar licensing requirements as that of this Board, and;

(B) Has been in podiatric practice in another state.

(3) This Temporary Faculty License shall be issued to the holder in 31 day increments not to exceed 24 periods. The incremental periods wherein the license is valid need not be contiguous, but rather may be in any arrangement approved by the Executive Director of the Board.

(4) The Temporary Faculty License shall authorize the visiting podiatric physician to practice podiatric medicine only and exclusively within the teaching confines of the educational institution in this state, hospital or approved residency program or a program pending approval by the Council of Podiatric Medical Education of the American Podiatric Medical Association as a part of the duties and responsibilities assigned by the teaching institution to the license holder.

(5) Except for the requirement of passing the Board's Oral Examination and completing an approved one-year residency program any person applying for a Temporary Faculty License under this section must comply with all application, and licensure requirements found in §371.3 and are subject to the Board's Statute and Rules.

(6) The holder must sign an oath on a notarized form provided by the Board swearing that the holder has read and is familiar with the Board's Statute and Rules; will abide by this Statute and Rules and will be subject to the disciplinary procedures of the Board.

(j) Provisional License.

(1) Requirements for Provisional License. On application for examination, an applicant may apply for a provisional license under the following circumstances.

(A) The applicant must be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Podiatric Medical Practice Act, subsequent amendments, and rules and must furnish proof of such licensure on Board forms provided.

(B) The applicant must have passed a national or other examination recognized by the Board relating to the practice of podiatric medicine and must submit a true and correct copy of the applicant's score report.

(C) The applicant must not have failed an examination for a license conducted by the Board.

(D) The applicant's license to practice podiatric medicine must not have been revoked or suspended in any jurisdiction.

(2) Sponsorship. An applicant for provisional licensure must be sponsored by a person currently licensed by the Board for at least five years and in good standing under the Podiatric Medical Practice Act with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the Board determines that compliance with that subsection constitutes a hardship to the applicant.

(4) Application and Fee. The Board shall issue a license pursuant to this rule to the holder of a provisional license if:

(A) The applicant for provisional licensure will be subject to all application requirements required by Chapter 371 of this title (relating to Examinations) and subject to the applicable examination fees established under §371.2(f) of this title (relating to Examination Fee). In addition, the applicant will be subject to a fee for issuance of a provisional license.

(B) No provisional license can be issued until all application forms and fees are received in the Board office and the application is approved.

(C) A provisional license expires upon the passage of 180 days or notice by the Board of the applicant's successful passage or failure of all examinations required by Chapter 371, whichever comes first. It shall be the responsibility of the applicant and sponsor to return the provisional license to the Board office on expiration.

(D) The applicant's failure to sit for the first scheduled Board examination following application for examination invalidates the provisional license, unless in the discretion of the Executive Director sufficient and reasonable evidence regarding nonappearance exists.

(E) Each applicant for provisional license shall receive only one nonrenewable license prior to the issuance of a license.

(F) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Podiatric Medical Practice Act or Board rules, such provisional license will be subject to disciplinary action including revocation.

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

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Janie Alonzo

Staff Services Officer III

Texas State Board of Podiatric Medical Examiners

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For further information, please call: (512) 305-7002

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22 TAC §371.4, §371.5

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.4 and §371.5, concerning Examinations without changes to the proposed text as published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6533). The text of the rules will not be republished.

The board, in proposing changes to other sections of Chapter 371 decided to go through the entire rule and make the necessary needed to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes.

The amendments are being adopted to make the necessary changes needed to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes. It will allow the public to find the corresponding statute more easily.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments have no other implications.

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

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Texas State Board of Podiatric Medical Examiners

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22 TAC §371.6, §371.8

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.6 and §371.8, concerning Examinations with changes to the proposed text that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6533). Changes to the proposed rule reflect non-substantive variations from the proposed amendments. The board's legal counsel has advised that the changes to the proposed rule affect no new persons, entities, or subjects other than those given notice. The rule will be republished.

The amendments are being adopted to make the necessary changes to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes and to change the rules for the administration of the examination from an oral to a jurisprudence exam.

The changes to the proposed rules that are adopted are as follows: In §371.6(a) the word "Podiatric" is changed to "podiatric" throughout the section. Also, in §371.8(c) the word "reflects" is changed to "reflect" and the word "boards" is changed to "board" in the first sentence.

The amendments make the necessary changes to allow the board to administer a jurisprudence examination instead of an oral examination.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments implement Texas Occupations Code, §202.254.

§371.6. Administration of Examination

(a) Examinations administered by the board for licensure - To be eligible for licensure an applicant must sit for and pass the Texas Podiatric medical jurisprudence examination administered by the board. The board shall administer the Texas Podiatric medical jurisprudence examination at times and places as designated by the board.

(b) All candidates shall be provided a candidates handbook that shall explain detailed information about the examination process prior to exam administration

(c) Candidates shall not be permitted to bring any help into the examination room, or to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within the hearing of a designated representative of the Board; nor shall the examinee leave the examination room except when permitted by the presiding examiners and accompanied by a member or an employee of the Board.

(d) A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while taking an examination required by the Board.

(e) At the option and in the complete discretion of the Board, the examination may be conducted, in whole or in part, upon a vote of a majority of the Board, by any school, institute, or organization that is deemed by the same majority of the Board to provide adequate and fair examinations of sufficient high standards as to continue to insure high quality practitioners in the State of Texas. The manner of examination, the time of examination and the scheduling of the examination, as well as fee requirements and grading operations may then be delegated by the Board to such an entity, provided, however, that examination results, grades and copies of the examination are made available to the Board and are sent directly from the delegated entity to the Board, and the Board is to maintain a record of the examination results.

§371.8. Exam Development Committee.

(a) The Exam Development Committee members shall consist of podiatric physicians licensed in the State of Texas and independent testing professional(s) contracted by the Board.

(b) The Board shall establish the qualifications for membership to the Exam Development Committee.

(c) The Exam Development Committee shall construct examinations from the committee's test specifications which reflects knowledge of the boards rules which govern the practice of podiatric medicine in Texas.

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

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Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
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For further information, please call: (512) 305-7000

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22 TAC §371.9, §371.10

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §371.9 and §371.10, concerning Administration of Examination and Skill Examiners without changes to the proposed repeal that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6534). The text of the rules will not be published.

The repeals delete rules that will no longer be needed when the new Jurisprudence examination begins.

No comments were received in response to the proposed repeals.

The repeals are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted repeals have no other implications.

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 February 14, 2002.

TRD-200200922

Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: March 6, 2002
Proposal publication date: August 31, 2001
For further information, please call: (512) 305-7000

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22 TAC §371.11, §371.13

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.11 and §371.13, concerning Examinations without changes to the proposed text that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6533). The text of the rules will not be published.

The amendments are being adopted to make the necessary changes to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes and to change the rules for the administration of the examination from an oral to a jurisprudence exam.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments implement Texas Occupations Code, §202.254.

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

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Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: March 6, 2002
Proposal publication date: August 31, 2001
For further information, please call: (512) 305-7000

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CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.2, §376.21

The Texas State Board of Podiatric Medical Examiners adopts amendments to §376.2, concerning Administrative Penalties and new §376.21, regarding Definitions without changes to the proposed text that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6534). The text of the rules will not be republished.

The board created a new system for investigations that includes a pool of podiatric medical reviewers who review the complaints. A new rule was needed to include these individuals in the definition of investigator. Also, in §376.2, changes were made to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes.

The sections are being adopted to make the necessary changes to include the Texas Occupations Code numbering system that replaces the old Texas Civil Statutes and to add a definition for investigator that includes the new podiatric medical reviewers.

No comments were received in response to the proposed amendment and new rule.

The amendment and new rule are adopted under Texas Occupations Code, §202.251, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment and new rule implements Texas Occupations Code, §202.204 and affects all of Chapter 376 regarding Violations and Penalties.

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 February 14, 2002.

TRD-200200924
Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: March 6, 2002
Proposal publication date: August 31, 2001
For further information, please call: (512) 305-7000

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CHAPTER 379. FEES AND LICENSE RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §379.1, concerning Fees with changes to the proposed text that was published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6535). Changes to the proposed rule reflect non-substantive variations from the proposed amendments. The board's legal counsel has advised that the changes to the proposed rule affect no new persons, entities, or subjects other than those given notice.

The board must raise its renewal fee to cover costs as mandated by the 2002-2003 Appropriations Bill. The bill states that we must raise additional revenue above and beyond what we already collect to receive the additional funding necessary to support the needs of our agency.

The changes to the proposed rule that is adopted are as follows: In §379.1(a) the last two words "and regulations" is being

deleted. Also in §379.1(b)(8) the phrase "Chapter 202, §301(d)" is being replaced with "§202.301(d)".

The rule increases the renewal fee for podiatric physicians to $425.00 per year.

No comments were received in response to the proposed rule amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements the Texas Occupations Code §202.153.

§379.1. Fees

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric medical Practice Act, subsequent amendments, and the applicable rules.

(b) Fees are as follows:

(1) Examination--$250

(2) Re-Examination--$250

(3) Temporary License--$125

(4) Provisional License--$125

(5) Class II Temporary License--$50

(6) Temporary Faculty License--$40

(7) Renewal--$425

(8) Renewal Penalty as specified in Texas Occupations Code, §202.301(d).

(9) Non certified podiatric technician registration--$25

(10) Non certified podiatric technician renewal--$25

(11) Duplicate License--$50

(12) Copies of Public Records.--The charges to any person requesting copies of any public record of the Board will be the charge established by the General Services Commission. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(13) Statute and Rule Notebook--provided at cost to the agency.

(14) Copy of CME printout--$5

(15) Duplicate Certificate--$10

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 February 14, 2002.

TRD-200200925

Janie Alonzo
Staff Services Officer III
Texas State Board of Podiatric Medical Examiners
Effective date: March 6, 2002
Proposal publication date: August 31, 2001
For further information, please call: (512) 305-7000

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts an amendment to §535.51, concerning general requirements for a real estate license without changes to the proposed text as published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10480).

The amendment adopts by reference a modified Application for Moral Character Determination. The application is filed by a person who wishes to have TREC determine whether the person's moral character satisfies requirements for licensing or registration, that is, whether the person would transact business with honesty, trustworthiness and integrity. The form is modified to caution the person that it should not be filed at the same time as an application for a license or if the person has already filed an application for a license, since an issue of the person's moral character would also be resolved by the filing of an application for a license. Since the application for moral character determination is a part of the licensing process, the form is also modified to advise the person filing the application that it is mandatory that the person supply TREC with the person's Social Security number. The number is used to enforce child support orders under the Texas Family Code, §231.302. A question relating to disciplinary actions by another licensing agency is modified to include whether the person has been placed on probation by another agency. Minor language changes were made to make the application more consistent with other TREC license application forms now in use.

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorizes 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 February 12, 2002.

TRD-200200885

Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 4, 2002
Proposal publication date: December 21, 2001
For further information, please call: (512) 465-3900

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts the amendments to §651.1, without changes to the proposed test as published in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9507) and will not be republished.

This section was amended to increase the renewal fees.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 February 12, 2002.

TRD-200200867
John P. Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: March 4, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 305-6900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §34.517

The Commissioner of Insurance adopts amendments to §34.517 concerning servicing of portable fire extinguishers. Section 34.517 is adopted without changes to the proposed text as published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10485) and will not be republished.

REASONED JUSTIFICATION. These amendments are necessary to implement legislation enacted by the 77th Legislature in Senate Bill 327. Senate Bill 327 amended Article 5.43-1 of the Insurance Code, which regulates the leasing, renting, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, or servicing of fixed fire extinguisher systems. Article 5.43-1 prohibited the servicing, leasing, selling, renting or installing of portable fire extinguishers, fixed fire extinguisher systems, and extinguisher equipment not labeled or listed by a testing laboratory approved by the Texas Department of Insurance. As amended, Article 5.43-1 requires the commissioner by rule to allow portable fire extinguishers to be serviced regardless of whether the fire extinguisher carries the required labeling or listing. Nothing in the rule requires owners of these types of portable extinguishers to service rather than replace unlabeled extinguishers.

Adopted §34.517 allows portable fire extinguishers to be serviced regardless of whether the fire extinguisher carries required labeling or listing by a testing laboratory approved by the Texas Department of Insurance. The amendments to §34.517 describe the three types of portable fire extinguishers that may be serviced. The amendments set forth requirements for labeling after servicing is completed. The three types of portable fire extinguishers listed in the amendments are for commercial use only.

Comment: A commenter asked the department to consider a Standards Interpretation Letter that the Occupational Safety and Health Administration provided to the department, which discusses the Hazard Communication Standard (HCS) as it relates to the labeling of portable fire extinguishers. The commenter states that the interpretation should be considered for personnel who are servicing and performing visual inspections or maintenance on fire extinguishers. The HCS requires hazardous material to be labeled. In order to comply with the HCS, the National Fire Protection Association (NFPA), in NFPA 10 adopted a label called Hazardous Material Identification System. The department adopted NFPA 10 in 28 TAC § 34.507.

Agency Response: The department appreciates the commenter's concerns, however, the amendments to §34.517 only address a situation where the testing laboratory label is missing. As noted the department adopted NFPA 10, the standard for portable fire extinguishers, in §34.507. Those requirements remain in full force and effect and are unchanged by the adoption of the amendments to this rule.

Neither for or against: Occupational Safety and Health Administration (OSHA).

The amendments are adopted pursuant to the Insurance Code Article 5.43-1 and §36.001. Article 5.43-1, as amended by the 77th Legislature under SB 327, requires the Commissioner of Insurance to adopt rules to allow portable fire extinguishers to be serviced regardless of whether the fire extinguisher carries the required labeling or listing. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance as authorized by statute.

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 February 15, 2002.

TRD-200200959
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 7, 2002
Proposal publication date: December 21, 2001
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 281. APPLICATIONS PROCESSING
SUBCHAPTER A. APPLICATIONS PROCESSING

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §281.2, Applicability; and the repeal of §281.7, Applications for Weather Modification Permits. The proposal was published in the November 23, 2001 issue of the *Texas Register* (26 TexReg 9523). The amendment to §281.2 and the repeal of §281.7 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 1175, 77th Legislature, 2001, transferred all powers, duties, obligations, rights, records, employees, and property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation (TDLR); and all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture (TDA). The TDLR was required to adopt rules no later than December 31, 2001. This transfer necessitates that the commission repeal 30 TAC Chapter 289 and make certain conforming changes to Chapter 281. The commission is adopting the amendment to and the repeal in Chapter 281 simultaneously with the repeal of Chapter 289.

SECTION BY SECTION DISCUSSION

Section 281.2, Applicability, is adopted to delete language that relates specifically to the weather modification program; and §281.7, Applications for Weather Modification Permits, is adopted to repeal language that is no longer necessary due to the repeal of Chapter 289 and the transfer of the weather modification licensing and permitting program to the TDLR.

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 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 §2001.0225(g)(3). The regulations contained in Chapter 289 were designed solely to establish licensing requirements governing who may or may not conduct weather modification in the state. A strict regulatory analysis of this commission action is not necessary since it does not meet the four criteria for applicability contained in Texas Government Code, §2001.0225(a). Regulatory analysis is necessary only for rulemaking of major environmental rules adopted by state agencies, "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." Specifically, this rulemaking does not involve the adoption of a major environmental rule which either exceeds a federal or state standard because there are no federal or other state standards regarding the subject matter of this rulemaking. They do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because no such agreements regarding the licensure of persons conducting weather modification exist. Finally, this rulemaking is not being adopted without the guidance of a specific state law because the legislature mandated that Chapter 289 be repealed and that licensing and regulation be reassigned from the commission to other state agencies.

Weather modification licensing and regulation formerly conducted by the commission was conducted after September 1, 2001 by TDLR under the same rules until TDLR adopted its own rules in compliance with SB 1175, which supercede those being repealed by the commission. Likewise, grant administration will be subject to the TDA's rules. Because the program is simply being moved to other state agencies by this action and because there will be no new regulatory requirements as a result of this action, there will be no regulatory effect and the repeal of Chapter 289 will not adversely impact the economy, jobs, environment, or health or safety.

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking does not meet the four applicability requirements listed in §2001.0225(a). The commission invited public comment on the draft regulatory impact analysis determination. No comments were received.

TAKINGS IMPACT ASSESSMENT

The specific purpose of this rulemaking is to implement the transfer of a regulatory program from the commission to TDA and TDLR as mandated by state law. This action will not burden, restrict, or limit an owner's right to property, nor will it cause a reduction in market value of private real property; therefore, it will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules

Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Managment Program.

HEARING AND COMMENTERS

A public hearing was not held on the proposal, and no comments were received on the proposal.

30 TAC §281.2

STATUTORY AUTHORITY

The amendment is adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from Texas Water Code (TWC), §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001 effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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 February 15, 2002.

TRD-200200946
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: March 7, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 239-5017

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30 TAC §281.7

STATUTORY AUTHORITY

The repeal is adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from Texas Water Code (TWC), §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001 effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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

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TRD-200200947
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: March 7, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 239-5017

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CHAPTER 289. WEATHER MODIFICATION

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§289.1, 289.11 - 289.22, 289.31, 289.32, 289.41 - 289.44, 289.51 - 289.53, 289.61, and 289.62, Weather Modification. The proposal was published in the November 23, 2001 issue of the *Texas Register* (26 TexReg 9523). The repealed sections are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 1175, 77th Legislature, 2001, transferred all powers, duties, obligations, rights, records, employees, and

property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation (TDLR); and all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture (TDA). The TDLR was required to adopt rules no later than December 31, 2001. Therefore, the commission adopts the repeal of Chapter 289 and certain conforming changes to 30 TAC Chapter 281. The commission is adopting the repeal of Chapter 289 simultaneously with the amendment to and repeal of a section in Chapter 281.

SECTION BY SECTION DISCUSSION

Section 289.1, Definitions; §§289.11 - 289.22, Issuance of Licenses and Permits; §289.31 and §289.32, Records and Reports; §§289.41 - 289.44, Amendment, Revocation, and Suspension of Licenses and Permits on Motion of Commission; §§289.51 - 289.53, Amendment of Permits Upon Application of Permittees; and §289.61 and §289.62, Hail Suppression Election Provisions, are repealed because the rules are no longer necessary.

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 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 §2001.0225(g)(3). The regulations contained in Chapter 289 were designed solely to establish licensing requirements governing who may or may not conduct weather modification in the state. A strict regulatory analysis of this commission action is not necessary since it does not meet the four criteria for applicability contained in Texas Government Code, §2001.0225(a). Regulatory analysis is necessary only for rulemaking of major environmental rules adopted by state agencies, "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." Specifically, this rulemaking does not involve the adoption of a major environmental rule which either exceeds a federal or state standard because there are no federal or other state standards regarding the subject matter of this rulemaking. They do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because no such agreements regarding the licensure of persons conducting weather modification exist. Finally, this rulemaking is not being adopted without the guidance of a specific state law because the legislature mandated that Chapter 289 be repealed and that licensing and regulation be reassigned from the commission to other state agencies.

Weather modification licensing and regulation formerly conducted by the commission was conducted after September 1, 2001 by TDLR under the same rules until TDLR adopted its own rules in compliance with SB 1175, which supercede those being repealed by the commission. Likewise, grant administration will be subject to the TDA's rules. Because the program is simply being moved to other state agencies by this action and because there will be no new regulatory requirements as a result of this action, there will be no regulatory effect and the repeal of Chapter 289 will not adversely impact the economy, jobs, environment, or health or safety.

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking does not meet the four applicability requirements listed in §2001.0225(a). The commission invited public comment on the draft regulatory impact analysis determination. No comments were received.

TAKINGS IMPACT ASSESSMENT

The specific purpose of this rulemaking is to implement the transfer of a regulatory program from the commission to the TDA and TDLR as mandated by state law. This action will not burden, restrict, or limit an owner's right to property, nor will it cause a reduction in market value of private real property; therefore, it will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held on the proposal, and no comments were received on the proposal.

SUBCHAPTER A. DEFINITIONS

30 TAC §289.1

STATUTORY AUTHORITY

The repeal is adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from Texas Water Code (TWC), §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article

3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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 February 15, 2002.

TRD-200200948
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: March 7, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 239-5017

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SUBCHAPTER B. ISSUANCE OF LICENSES AND PERMITS

30 TAC §§289.11 - 289.22

STATUTORY AUTHORITY

The repeals are adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from TWC, §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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

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Stephanie Bergeron
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SUBCHAPTER C. RECORDS AND REPORTS

30 TAC §289.31, §289.32

STATUTORY AUTHORITY

The repeals are adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from TWC, §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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SUBCHAPTER D. AMENDMENT, REVOCATION, AND SUSPENSION OF LICENSES AND PERMITS ON MOTION OF COMMISSION

30 TAC §§289.41 - 289.44

STATUTORY AUTHORITY

The repeals are adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from TWC, §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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

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SUBCHAPTER E. AMENDMENT OF PERMITS UPON APPLICATION OF PERMITTEES

30 TAC §§289.51 - 289.53

STATUTORY AUTHORITY

The repeals are adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from TWC, §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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SUBCHAPTER F. HAIL SUPPRESSION ELECTION PROVISIONS

30 TAC §289.61, §289.62

STATUTORY AUTHORITY

The repeals are adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: "that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities" (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed "the state's weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification" from the commission's jurisdiction by deleting the quoted language from TWC, §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001, effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). "All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR." (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

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CHAPTER 294. UNDERGROUND WATER MANAGEMENT AREAS
SUBCHAPTER F. EAST TEXAS GROUNDWATER MANAGEMENT AREA

30 TAC §§294.60 - 294.63

The Texas Natural Resource Conservation Commission (commission) adopts new §§294.60 - 294.63 *without changes* to the proposed text as published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8489) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This adopted rulemaking adds new §§294.60 - 294.63 to designate a new groundwater management area (GMA) in the eastern portion of the state that would include all of Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties. The purpose of the adopted rulemaking is to provide the most suitable boundary for the management of the groundwater resources. The rulemaking is made in response to a petition requesting a designation of a GMA submitted on February 8, 2001 by Save Our Springs of North East Texas, Inc. on behalf of 57 landowners in Wood County and a March 21, 2001 commission decision regarding the petition to initiate rulemaking.

Landowner Petition and Commission Decision

The February 8, 2001 petition requested that the commission designate a GMA to include all of Wood County and that the GMA be designated with the objective of providing the most suitable area for the management of groundwater resources by a groundwater conservation district. The petition included resolutions supporting commission designation of a GMA from the Wood County Commissioners Court, City of Hawkins, City of Winnsboro, Hawkins Area Chamber of Commerce, and the Upshur County Commissioners Court.

In January 2001, the commission received copies of similar resolutions supporting the commission designation of a GMA in the area for the Carrizo-Wilcox Aquifer. Similar resolutions were submitted by the Wood Soil and Water Conservation District (S&WCD) Number 444 (Wood County), the Upshur-Gregg Water S&WCD Number 417 (Upshur and Gregg Counties), the Sulphur-Cypress S&WCD Number 419 (Camp, Franklin, Morris, and Titus Counties), and the Hopkins-Rains S&WCD Number 445 (Hopkins and Rains Counties).

On March 21, 2001, the commission considered the petition and instructed the executive director's staff to study whether a GMA should be designated in the area, and if they determined that one was appropriate, to propose a rule that would designate and delineate the area as a GMA. Because of the regional nature of the groundwater resources that occur in Wood and the surrounding counties, the commission also instructed the executive director's staff to evaluate the most suitable boundaries for the delineation of a GMA for the regional groundwater resources.

The petition was processed by the executive director's staff under the Administrative Procedure Act (APA), Texas Government Code, §2001.021 and 30 TAC §20.15 and §§294.21 - 294.23. The petition was found to meet the requirements of Texas Water Code (TWC), §35.005 (Pre-Senate Bill (SB) 2, 2001) and §294.22, which provide for the landowner petition process for the designation of a GMA.

Prior to September 1, 2001, TWC, §35.004, Designation of Groundwater Management Areas, provided that the commission on its own motion, or in response to receiving a petition, may designate a GMA. Texas Water Code, §35.004 also provided

that to the extent feasible, GMAs shall coincide with the boundaries of a groundwater reservoir (aquifer) or subdivision of an aquifer. However, the statute allows the commission to consider other factors such as the boundaries of political subdivisions to delineate and designate GMAs to provide for the most suitable area to accomplish groundwater management.

Senate Bill 2, 77th Legislature, 2001, made significant changes to TWC, Chapter 35 that became effective on September 1, 2001. As amended by SB 2, the designation of GMAs will be the under the jurisdiction of the Texas Water Development Board (TWDB). Texas Water Code, §35.004(a) as amended by SB 2, provides that the TWDB shall complete the initial designation of GMAs for all of the state's major and minor aquifers by September 1, 2003. Texas Water Code, §35.004(b) as amended by SB 2, however, provides that the commission may designate a GMA after September 1, 2001 for a petition filed and accepted by the commission according to its rules in effect before September 1, 2001, and that the commission shall act on the designation in accordance with §35.004 as amended. Texas Water Code, §35.005 and §35.006 were repealed.

Reason for the Rules and Purpose of GMA Designation

The commission adopts this rulemaking to meet the commission's responsibility under TWC, Chapter 35 to designate GMAs. The designation of the GMA would facilitate both the creation of locally managed groundwater conservation districts and regional cooperation by newly created districts to manage regional groundwater resources.

The purpose for designation of a GMA is two-fold. First, a GMA is a prerequisite for the creation of a groundwater conservation district through TWC, Chapter 36 landowner petition process. A GMA must be designated before a groundwater conservation district can be created administratively by the commission in response to a landowner district-creation petition. Groundwater management is accomplished by groundwater conservation districts as created and authorized under TWC, Chapter 36, or by special law. A GMA is only an identified geographic area and as such does not provide any entity with groundwater management authority. The designation of a GMA by the new rules would simplify future landowner petitions for the creation of new groundwater conservation districts in the identified area. Secondly, the designation would facilitate joint management planning among groundwater conservation districts that share the same aquifers. Groundwater conservation districts that are located in a common GMA are required under TWC, §36.108 to coordinate groundwater management planning for conservation of the common groundwater resources. The adopted new rules define an area where future groundwater conservation districts will be required to coordinate groundwater management planning for the Carrizo-Wilcox Aquifer and other aquifers.

Previous GMA Designations for the Carrizo-Wilcox Aquifer

The Carrizo-Wilcox Aquifer is exposed on the land surface in a belt from Mexico northeasterly across Texas into Arkansas and Louisiana and dips toward the Gulf of Mexico. The commission, or its predecessors, have designated four regional GMAs for the Carrizo-Wilcox Aquifer, all of which are south and west of the Trinity River. In the southwestern part of the state, the Texas Board of Water Engineers designated Subdivisions 1 and 2 of the Underground Water Reservoir of the Carrizo-Wilcox Sands in 1957. Subdivision 1 includes the Carrizo-Wilcox Aquifer in all or portions of Dimmit, Frio, La Salle, Medina, Maverick, Uvalde, and Zavalla Counties. Subdivision 2 includes the Carrizo-Wilcox Aquifer in all or portions of Atascosa, Bexar, McMullen, and Wilson Counties. In 1987, the Texas Water Commission designated Management Areas 3 and 4 of the Carrizo-Wilcox Aquifer. Management Area 3 includes the Carrizo-Wilcox Aquifer in portions of Bastrop, Caldwell, DeWitt, Fayette, Gonzales, Guadalupe, and Lavaca Counties. Management Area 4 includes the Carrizo-Wilcox Aquifer in all or portions of Bastrop, Brazos, Burleson, Falls, Fayette, Freestone, Grimes, Lee, Leon, Limestone, Madison, Milam, Navarro, Robertson, Walker, and Williamson Counties.

The adopted rules do not include the previously designated areas. The adopted GMA includes all of Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties.

General Stratigraphy

The geologic units that contain groundwater resources in the adopted GMA are the Tertiary-age Midway Group, Wilcox Group, Claiborne Group, and Jackson Group. The Claiborne Group of the Eocene Epoch includes the major water-bearing formations in the east Texas area. These are the Carrizo Sand, Queen City Formation, Sparta Formation, and Yegua Formation. The lower portion of the Carrizo-Wilcox Aquifer includes units of the Wilcox Group and the upper portions consists of the Carrizo Sands of the Claiborne Group. The Queen City and Sparta Aquifers include the Queen City and Sparta Formations of the Claiborne Group, respectively. The Yegua-Jackson Aquifer includes the upper unit of the Claiborne Group, the Yegua Formation, and the overlying Jackson Group of the Eocene Epoch. The Jackson Group includes the Witsett, Manning, Wellborn, and Cadell Formations.

Rock units to the north and west of the adopted GMA are older, Cretaceous-age rocks that are not geologically or hydrologically associated with those in the adopted GMA. The primary Cretaceous Aquifers to the northwest include the Trinity Group, Woodbine, Nacatoch, and Blossom Aquifers.

Rock units to the south are younger Tertiary-age (Oligocene-Miocene Epoch) rocks where the primary major aquifer is the Gulf Coast Aquifer. The lower most (oldest) unit of the Gulf Coast Aquifer is the Catahoula Formation that acts as a restrictive confining system, separating the aquifer from the underlying Jackson Group.

Geologic Controls

Rock units including the Tertiary-age Aquifers east of the Balcones Fault System in central Texas generally dip toward the Gulf of Mexico. The northern portion of the Carrizo-Wilcox Aquifer is more complex structurally than it is in its southern extent in existing Management Areas 1 - 4. The aquifer crops out in two distinct bands (where the aquifer units are exposed at the surface), one extending from Management Area 4 at the Trinity River northeasterly through Henderson, Van Zandt, Rains, Wood, Hopkins, Franklin, Titus, Morris, Cass, and Bowie Counties; the other, caused by the Sabine Uplift to the southeast, in Marion, Harrison, Gregg, Rusk, Panola, Shelby, Nacogdoches, San Augustine, and Sabine Counties. Between these two outcrop areas lies the East Texas structural basin, a trough into which sediments of the aquifer dip from both sides. South of Anderson, Cherokee, Nacogdoches, San Augustine, and Sabine Counties, the aquifer dips toward the Gulf Coast. The Queen City Aquifer outcrops southeast of the western Carrizo-Wilcox outcrop and overlies the

downdip portion of the Carrizo-Wilcox Aquifer in the East Texas structural basin. South of Cherokee and Anderson Counties, the sediments dip to the south. The outcrop of the Sparta Aquifer is southeast of the outcrop of the Queen City Aquifer and overlies the downdip portion of the Queen City Aquifer in Houston, Anderson, Cherokee, Angelina, and Nacogdoches Counties. The sediments that make up the aquifer dip to the south and southeast toward the Gulf Coast. The outcrop of the Yegua-Jackson Aquifer occurs south of the outcrop of the Sparta Aquifer. This aquifer crops out in an east to west direction across Trinity, Angelina, San Augustine, and Sabine Counties and dips south-southeast toward the Gulf Coast.

Groundwater Use

Based on 1997 estimated groundwater pumpage data maintained by the TWDB, the Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson Aquifers are the primary aquifers utilized within the adopted GMA. Pumpage of groundwater from the Carrizo-Wilcox Aquifer alone accounted for greater than 70% of the total groundwater pumpage in 20 of the 27 counties (Anderson, Angelina, Camp, Cass, Cherokee, Franklin, Harrison, Henderson, Hopkins, Morris, Nacogdoches, Panola, Rains, Rusk, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood) and greater than 50% of the total groundwater pumpage in two additional counties, Gregg and Marion. Combined groundwater pumpage from the Carrizo-Wilcox, Queen City, and Sparta Aquifers accounted for greater than 95% of the total groundwater pumpage in all of these counties except for Angelina (87%), Hopkins (87%), Rains (80%), and Titus (94%).

Significant groundwater pumpage from the Yegua-Jackson Aquifer occurs in five of the counties in the southern part of the adopted GMA. The 1997 estimated groundwater pumpage from the Yegua-Jackson Aquifer in Angelina, Houston, Sabine, San Augustine, and Trinity Counties accounted for 12%, 43%, 78%, 52%, and 97%, respectively, of the total groundwater pumpage in these counties. Combined groundwater pumpage from the Yegua-Jackson Aquifer and the Carrizo-Wilcox, Queen City, and Sparta Aquifers accounted for greater that 95% of the total groundwater pumpage in all five of these counties.

Groundwater pumpage from other aquifers delineated by the TWDB also occurs in the adopted GMA. The 1997 estimated groundwater pumpage from the Gulf Coast Aquifer accounted for three percent of the total pumpage in Trinity County. Pumpage from the Nacatoch Aquifer accounted for 44% and 11% of the total groundwater pumpage in Bowie and Hopkins Counties, respectively. Pumpage from the Blossom Aquifer accounted for five percent of the total pumpage in Bowie County.

Regional Assessment of Groundwater Resources

The Carrizo-Wilcox Aquifer is the primary groundwater resource in the adopted GMA. This aquifer is identified as a major aquifer by the TWDB because it supplies large quantities of water to a large area of the state. The Queen City and Sparta Aquifers are also important groundwater resources in the adopted GMA. These aquifers are identified by the TWDB as minor aquifers because they supply large quantities of water in small areas of the state or small quantities of water in large areas of the state. The Yegua-Jackson Aquifer has not been delineated by the TWDB to date; however, this aquifer is also an important resource in the southern part of the adopted GMA. The Trinity Group Aquifer is the major aquifer to the northwest, and the Gulf Coast Aquifer is the major aquifer to the south of the adopted GMA.

The Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson Aquifers are regional aquifers. They extend from the Arkansas and Louisiana borders into south Texas. The Carrizo-Wilcox and Yegua-Jackson Aquifers extend to the Rio Grande and the Queen City and Sparta Aquifers extend into Frio and La Salle Counties to the south. Both the Carrizo-Wilcox and Queen City Aquifers underlie Wood and surrounding counties and the Sparta and Yegua Formation-Jackson Group Aquifers are regionally and geologically associated with the other two aquifers. The designation of the GMA by the adopted new rules delineates an area where regional groundwater management planning for these overlapping aquifers can be coordinated by existing and any future groundwater conservation districts.

Although the Nacatoch Aquifer occurs in parts of Bowie, Franklin, Hopkins, Morris, Rains, and Titus Counties and the Blossom Aquifer occurs in Bowie County, the Carrizo-Wilcox Aquifer is the primary major aquifer in this six-county area. The commission determined that all of the territory in these counties should be included in the adopted GMA because of the shared primary major aquifer, but that other counties to the north and west that do not share the Carrizo-Wilcox Aquifer should not. Regional groundwater management planning for the Trinity Group Aquifer and the other minor Cretaceous Aquifers outside of the adopted GMA would be better accomplished through a separate designation of a different GMA.

In the adopted GMA, the Gulf Coast Aquifer occurs only in the extreme southern part of Angelina, Sabine, and Trinity Counties. Again, the commission determined that all of the territory in these three counties should be included in the adopted GMA due to the shared Carrizo-Wilcox major aquifer, but that other counties to the south should not. Regional groundwater management planning for the Gulf Coast Aquifer to the south would be better accomplished through a separate designation of a different GMA.

Adopted Boundaries

The commission considered numerous factors to develop these rules. The commission considered the purpose of a GMA for aquifers in Wood and the surrounding counties. This purpose is to delineate the most suitable area for the management of groundwater resources. To delineate the GMA, the commission evaluated the regional nature, extent, and use of the aquifers shared by Wood and the surrounding counties. The commission reviewed and evaluated the extent and delineation of the previously designated GMAs to the south and west for the Carrizo-Wilcox Aquifer. The commission also evaluated the extent, location, and relationship of other major and minor aquifers to the north and west and to the south of the adopted area and the extent, location, and relationship of the aquifers within the area. The commission considered the directions given to the TWDB in SB 2 to designate GMAs for all of the state's major and minor aquifers. The commission also considered other factors such as political subdivision boundaries because such boundaries are often recognized and preferred during locally-initiated groundwater conservation district creation efforts.

Texas Water Code, Chapter 35 provides that to the extent feasible, boundaries of aquifers shall be considered when designating GMAs. Chapter 35 also provides that other factors, including the boundaries of political subdivisions, may be considered. Previous GMA designations by the commission or its predecessors have been delineated by hydrological boundaries or by a combination of hydrological and political subdivision (county) boundaries. While designating GMAs by hydrological boundaries is

the preferred practice, political boundary considerations are often major considerations in establishing groundwater conservation district boundaries. Generally, the political boundaries preferred by petitioners or by citizens initiating district creation do not coincide with hydrogeologic boundaries.

Texas Water Code, Chapter 35 provides that each GMA shall be designated with the objective of providing the most suitable area for management of the groundwater resources, and TWC, Chapter 36 provides that groundwater conservation districts are the state's preferred method of groundwater management. There are presently 87 groundwater conservation districts created in the state; 64 are presently established and the other 23, created by special Acts of the 77th Legislature, 2001, will require confirmation of the voters to be established. Of the 87 districts, the citizens that have initiated district creation have preferred strict county boundaries for 68 (78%) of the districts. A combination of county boundaries and other types of boundaries account for an additional 12 (14%) of the districts. Therefore, county boundaries have been a primary consideration for 92% of all groundwater conservation districts created to date. Only seven of the 87 (8%) districts were created strictly on hydrological boundaries. The East Texas Groundwater Management Area (ETGMA) is adopted to be delineated to include full counties because it is most likely that these types of boundaries would be recognized and preferred by citizens in future groundwater conservation district creation efforts.

The commission considered the boundaries of major and minor aquifers, pumpage from aquifers, and political subdivision boundaries that would facilitate groundwater conservation district creation in developing the adopted GMA delineation. The commission determined that the delineated boundaries are the most suitable boundaries for management of the regional groundwater resources that occur in the east Texas area.

Of the 27 counties in the GMA, 19 (Anderson, Angelina, Camp, Cass, Cherokee, Gregg, Harrison, Houston, Marion, Morris, Nacogdoches, Panola, Rusk, Sabine, San Augustine, Shelby, Smith, Upshur, and Wood) are entirely underlain or almost entirely underlain by the Carrizo-Wilcox, Queen City, Sparta, or Yegua-Jackson Aquifers. The location of the aquifers were the primary considerations for inclusion of these counties.

In addition to the location of the aquifers, the commission considered groundwater use in evaluating whether the full extent of a county should be included in the adopted area. Part of Trinity County, on the southern boundary of the adopted GMA, is underlain by the Gulf Coast Aquifer. However, the 1997 estimated groundwater pumpage from the Yegua-Jackson Aquifer in Trinity County accounted for 97% of the total groundwater use, while pumpage from the Gulf Coast Aquifer accounted for only three percent of the total groundwater use. Based on this percentage of groundwater pumpage, the commission has determined that all of Trinity County be included within the adopted GMA.

Seven of the northern counties (Henderson, Van Zandt, Rains, Hopkins, Franklin, Titus, and Bowie) in the adopted GMA are partially underlain by the Carrizo-Wilcox Aquifer or both the Carrizo-Wilcox and Queen City Aquifers and partially underlain by other aquifers that are primarily located outside of the adopted area. Again, the commission considered groundwater use in evaluating whether the full extent of these counties should be included in the adopted area. In six of the counties (Henderson, Van Zandt, Rains, Hopkins, Franklin, and Titus), groundwater pumpage from either the Carrizo-Wilcox Aquifer or both the Carrizo-Wilcox and Queen City Aquifers accounted for greater than 80% of the total pumpage and exceeded 95% of the total groundwater pumpage in Henderson, Van Zandt, and Franklin Counties. Based on these percentages of groundwater pumpage, the commission has determined that all of these six counties be included within the adopted GMA.

Bowie County is underlain by one major aquifer, the Carrizo-Wilcox Aquifer; two minor aquifers, the Nacatoch and Blossom Aquifers; and other undifferentiated sources. The commission considered groundwater use in evaluating whether the full extent of the county should be included in the adopted area. The 1997 TWDB estimated groundwater pumpage data for the county indicated that pumpage from the Carrizo-Wilcox Aquifer accounted for 38% of the total pumpage. Pumpage from the Nacatoch and Blossom Aquifers accounted for 44% and five percent, respectively, of the total groundwater pumpage. Groundwater pumpage from undifferentiated sources, that is not from a major or minor aquifer specifically identified in the TWDB data set, accounted for 14% of the total pumpage in the county. Since groundwater pumpage in Bowie County relies heavily upon both the Carrizo-Wilcox and Nacatoch Aquifers, the commission also considered other issues related to political subdivision boundaries and groundwater management.

The commission considered three possible GMA delineation scenarios for Bowie County: 1.) include the full extent of the county in the GMA; 2.) divide the county hydrologically and only including the area underlain by the Carrizo-Wilcox Aquifer in the GMA; or 3.) exclude the full extent of the county from the GMA.

Under the first option, inclusion of all of Bowie County in the GMA, the area would include the full extent of the regional Carrizo-Wilcox Aquifer and would recognize boundaries that are generally preferred in groundwater conservation district creation efforts. While estimated groundwater pumpage from the Carrizo-Wilcox Aquifer in Bowie County does not represent the majority of total pumpage, it does represent a significant percentage of the pumpage. Including the full county in the GMA would assure groundwater conservation district coordination if more than one district is created in the east Texas area. The disadvantage of full-county inclusion would be the limitation placed on coordinated management planning for the Nacatoch Aquifer should a GMA be designated specifically for this minor aquifer.

The commission considered a second option, dividing Bowie County hydrogeologically and only including the area underlain by the Carrizo-Wilcox Aquifer in the GMA. Based on review of district creations, this option may be problematic for groundwater conservation district creation. Historically, landowners that have initiated groundwater conservation district creation efforts, either under TWC, Chapter 36 or through special law, have preferred recognizable or politically standing boundaries. If only part of the county were included in the area, the commission could not, in response to a landowner district creation petition, create a district that would include all of the county. Furthermore, the commission must consider financial information in the proceedings to create a groundwater conservation district. An application to create a groundwater conservation district must include estimates for projected revenue and expense for the proposed district. If only a portion of the county was included in the area, it may be likely that there would not be sufficient revenue to finance district operation and maintenance or that revenue rates would have to be established at levels that would be unacceptable to the voters. Either of these situations would potentially lead to a proposed district the commission could not create, or a

proposed district that would likely fail to be confirmed by the voters. Under this scenario, the only alternative for the creation of a county-wide groundwater conservation district would be through special law.

The commission considered a third option, excluding the full extent of Bowie County from the GMA. This option would not provide for the most suitable area for management of the Carrizo-Wilcox Aquifer in east Texas. This option would isolate a single part of the Carrizo-Wilcox Aquifer from the remaining part of the regional aquifer, and thus would inhibit coordinated groundwater management for the regional resource and remove the ability of a groundwater conservation district to redress the failure of coordinated management with the commission under TWC, §36.108 and §36.3011.

The commission determined that the full extent of Bowie County should be included in the adopted ETGMA. The commission determined that including the full extent of the county would be beneficial to the citizens of Bowie County should they choose, in the future, to petition the commission for the creation of a groundwater conservation district. Furthermore, the inclusion of the county in the adopted GMA would assure that coordinated management of the Carrizo-Wilcox Aquifer would be accomplished if such a district were created either by the commission or by the legislature.

SECTION BY SECTION DISCUSSION

Adopted new §294.60, Purpose and Scope, provides the purpose and scope of the adopted rules. The adopted section provides that the purpose of the rule is to designate the ETGMA. The adopted new section reiterates that the rules do not empower any entity with groundwater management authority; that designation of a GMA is a prerequisite for the creation of a groundwater conservation district through the TWC, Chapter 36 landowner petition process; and that groundwater conservation districts within the management area will be subject to the management planning provisions of TWC, §36.108.

Adopted new §294.61, Definitions, provides definitions for certain words and terms. The adopted section is included to clearly define these words and terms as used in the adopted rules. The definitions provided for the Carrizo-Wilcox, Queen City, and Sparta Aquifers are based on previous aquifer-delineation work of the TWDB (Ashworth, J.B. and Flores, R.R., Texas Water Development Board Report LP-212, June 1991 and Ashworth, J.B. and Hopkins, J., Texas Water Development Board Report 395, November 1995). The definition of the Yegua-Jackson Aquifer is based on ongoing aquifer evaluation work of the TWDB and previously published TWDB reports (Anders, R.B., Texas Water Development Board Report 37, January 1967 and Guyton, W.F. and Associates, Texas Water Development Board Report 110, March 1970). Groundwater management area is given the same definition as provided by TWC, §35.002(11). The definition of other aquifers identifies additional groundwater resources that are located in the adopted GMA.

Adopted new §294.62, Designation of East Texas Groundwater Management Area (ETGMA), provides for the designation of the ETGMA and provides that the area is designated for the management of the Carrizo-Wilcox Aquifer, Queen City Aquifer, Sparta Aquifer, Yegua-Jackson Aquifer, and other aquifers.

Adopted new §294.63, Boundaries, provides the boundaries for the ETGMA. The ETGMA will have boundaries that are coterminous with, that is having the same boundaries, and include all territory within Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Marion, Morris, Nacogdoches, Panola, Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt, and Wood Counties.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." "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 section of the state. While the purpose of the rules is ultimately, if a groundwater conservation district is created, to promote coordination of groundwater management within the area which could provide protection to the environment, the rules do 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 section of the state. The designation of a GMA in itself does not have any regulatory effect. The subsequent creation of a groundwater conservation district within the GMA would have a regulatory effect.

The commission solicited comments on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rule under Texas Government Code, §2007.043, the Texas Private Real Property Rights Preservation Act. This rulemaking is intended to designate an area as a GMA under TWC, §35.004. This section provides that pursuant to a petition filed and accepted by the commission before September 1, 2001, the commission can designate by rule GMAs to provide the most suitable area for the management of groundwater. This rulemaking does not impact any person's private real property because the designation of a GMA does not, in itself, lead to any regulatory requirements on the land in the area.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that it is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program nor does it affect any action or authorization identified in §505.11. This rulemaking concerns only the designation of a GMA. Therefore, the rulemaking is not subject to the CMP.

The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARING AND COMMENTERS

The proposed rules were published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8489). The commission held three public hearings on this rulemaking. The first two hearings were on November 12, 2001 in Quitman and Tyler. The third hearing was in Nacogdoches on November 13, 2001. The comment period closed on December 10, 2001.

A total of 15 commenters provided comments on the proposed rules: C. Miller Water Well Drilling Company (MWWD); Mr. George Campbell, Chairman, Regional Water Planning Group I (RWPG I); Cypress Springs Water Supply Corporation (CSWSC); Fair Management (FM); Greater Lake Palestine Council (GLPC); Mr. J. C. Hughes, City Manager, City of Nacogdoches (City of Nacogdoches); the Honorable Sue Kennedy, County Judge, Nacogdoches County; Larry's Water Well Drilling (LWWD); Northeast Territory Management (NTM); Northeast Texas Municipal Water District (NTMWD); Smith County Water District No. 1 (SCWD#1); the Honorable Jerry Yost, former Texas State Representative; and three individuals.

Of these, two individuals and GLPC commented that they were generally in favor of the proposal. One individual, FM, CSWSC, NTMWD, the Honorable Jerry Yost, SCWD#1, LWWD, the Honorable Sue Kennedy, RWPG I, and the City of Nacogdoches provided general comments, but did not comment in favor of, or in opposition to the proposal. These commenters did not suggest any changes. MWWD and NTM commented that they were generally opposed to the proposal but did not suggest any changes.

RESPONSE TO COMMENTS

Many comments were related to the creation, management, or decision making of a groundwater conservation district or the designation of a priority groundwater management area (PGMA). The commission attributes most of these comments to confusion between the designation of a GMA, which is the subject of this rulemaking, and the designation of a PGMA and/or the creation of a groundwater conservation district which are separate processes and are not part of this rulemaking. The commission further emphasizes that the designation of the ETGMA by these adopted sections does not create a groundwater conservation district, force the creation of a groundwater conservation district, or designate or set a path to designate a PGMA.

Comment

FM, from Smith County, commented that it was opposed to the formation of a groundwater conservation district by the proposal. FM also noted that "the formation of the proposed district" by the proposal was contrary to, and circumvented the direction of the legislature as set forth in SB 1. NTM commented it was strongly opposed to the proposed rules because they basically created another taxing entity. LWWD was opposed to groundwater conservation district well spacing rules that would be more restrictive than state standards. MWWD commented that the benefits versus the burden of groundwater management and creation of a groundwater conservation district should be answered before any are created.

Response

The commission acknowledges these comments and responds that these sections designate a GMA. They do not create a groundwater conservation district. The commission cannot on its own motion, create a groundwater conservation district or require a groundwater conservation district be created in a GMA. Landowners would have to petition the commission under TWC, Chapter 36 or pursue special law through the legislative process to create a groundwater conservation district, or petition an existing groundwater conservation district to be added to the district. No change has been made to the rules as a result of these comments.

Comment

CSWSC and NTMWD, water providers in Franklin, Wood, Hopkins, and Titus Counties and Camp, Cass, Gregg, Harrison, Marion, Morris, and Upshur Counties, respectively, and MWWD commented on concerns about the potential cost of groundwater conservation districts in the proposed ETGMA. The water providers commented on the varying reliance on surface water and groundwater throughout the proposed ETGMA and noted that the cost to fund the operational expenses of a groundwater conservation district could vary greatly because of the different levels of dependence. Both commented that the designation of the proposed ETGMA would not limit the financial options available to potential groundwater conservation districts. The water suppliers noted they would be opposed to the proposed rules if they would cause groundwater conservation districts to sustain additional cost or suffer other financial consequences.

Response

The commission acknowledges these comments and responds that designation of the ETGMA by these sections will not limit financial options available to potential groundwater conservation districts or cause future districts to suffer additional costs or financial consequences. (See previous response to comments.) No change has been made to the rules as a result of these comments.

Comment

Judge Kennedy, RWPG I, and the City of Nacogdoches commented that the recent creation of the Pineywoods Groundwater Conservation District in Angelina and Nacogdoches Counties had been overwhelmingly supported at the local level to manage groundwater resources in the area. Judge Kennedy noted the new district did not want to have too many restrictions placed upon it for continuing to work with other counties in the area to preserve groundwater resources. RWPG I made similar comments about the recent creation of the Neches and Trinity Valleys Groundwater Conservation District in Anderson, Henderson, and Cherokee Counties. The City of Nacogdoches commented that local efforts have worked hard to control their own groundwater management destiny, and its destiny should not be controlled from Wood County.

Response

The commission agrees with these comments and recognizes that groundwater management is accomplished by groundwater conservation districts. (See previous response to comments.) The commission notes that TWC, Chapter 36 is structured so that each groundwater conservation district is authorized to develop and adopt the programs and rules that will be applicable and acceptable for groundwater management for that district. The commission notes that under Chapter 36, groundwater conservation districts are governed by locally elected boards of directors who are responsible, through a public forum, for adopting the policies, plans, and rules for the district.

The commission notes that designation of the ETGMA by these sections does not authorize or empower any groundwater conservation district or county to dictate groundwater management to any other such entity. Groundwater conservation districts within a common GMA are required to forward of copy of their certified groundwater management plans to other districts in the GMA. The level of groundwater management coordination within a GMA is determined by the groundwater conservation districts within the area. Texas Water Code, §36.108 provides that a groundwater conservation district with just cause may request an inquiry by the commission into another district's plan

implementation and sets a high threshold for such commission review. However, no groundwater conservation district can exercise groundwater management authority or control over another district. No change has been made to the rules as a result of these comments.

Comment

CSWSC and NTMWD commented that the local area should remain in a position of control to determine whether or when to form a groundwater conservation district and noted that the designation of the ETGMA would not alter the rights of the local areas to make such decisions. CSWSC, NTMWD, and RWPG I commented that they would be opposed to the proposed rules if they would limit local control or decisions to form a groundwater conservation district. Similarly, former Rep. Yost commented that local concerns and interests should control their own destiny. Judge Kennedy commented on the importance of local, regional, and state partnerships in managing groundwater but stressed the importance of addressing groundwater management issues at the local level. RWPG I noted that there were counties within its area (Smith, part of Trinity, Shelby, Sabine, San Augustine, Rusk, Panola, and Houston) that have not had the opportunity or are not aware of what may need to be done with respect to groundwater management. RWPG I commented that citizens of counties without a groundwater conservation district should have a choice to participate either as individual counties or collectively as multiple counties and should have a choice on how local groundwater conservation districts are structured and authorized.

Response

The commission agrees with these comments and acknowledges that TWC, Chapter 36 is structured to ensure local control in making groundwater management decisions. The delineation and designation of the ETGMA by these sections do not force or compel any county or counties to create a groundwater conservation district. However, the commission notes that designation of the ETGMA by these sections will facilitate the creation of a groundwater conservation district if pursued through landowner petition--local initiative process. No change has been made to the rules as a result of these comments.

Comment

CSWSC and NTMWD commented that local decisions to form groundwater conservation districts is limited by the commission in PGMAs. The water providers commented that if the proposed ETGMA becomes a PGMA, then the commission has statutory directives to be involved and to potentially assert involuntary management by creation or annexation of a groundwater conservation district. Former Rep. Yost commented that the commission could designate an area as a PGMA which could trigger a series of events leading to the creation of a groundwater conservation district that would not be ratified by the citizens.

Response

The commission responds that these adopted rules only designate a GMA, they do not designate a PGMA. Designation of a PGMA is a separate and statutorily different procedure. The commission disagrees that local decisions to form groundwater conservation districts is limited by the commission in a PGMA. The procedure for PGMA designation is to identify, study, and delineate areas of the state that are experiencing or are expected to experience critical groundwater problems within a 25-year planning horizon, and to recommend groundwater management strategies to address the identified critical groundwater problems. Texas Water Code, Chapter 35 requires significant stakeholder involvement, an evidentiary hearing, and educational programming in the PGMA designation process. After a PGMA has been designated, the statute requires educational programming fostered by county commissioner-appointed steering committees and provides up to a two-year time frame for local decision making regarding creation of a groundwater conservation district or addition of the PGMA to an existing groundwater conservation district. The commission is mandated to establish groundwater conservation districts in designated PGMAs only if it finds that such districts are necessary and critical groundwater management decisions are disregarded at the local level. No change has been made to the rules as a result of these comments.

Comment

Former Rep. Yost commented that designation of the ETGMA would not prevent the commission from later designating the area as a PGMA, at which time the state would take control and local groundwater management options would be lost. Former Rep. Yost commented that the State of Texas does not control groundwater unless a PGMA is designated.

Response

The commission agrees that designation of the ETGMA would not prevent the commission from later designating the area as a PGMA. However, the commission notes such a PGMA designation would have to occur through a separate statutory process as outlined in the previous response. The commission disagrees that the state controls groundwater once a PGMA is designated. The commission has no statutory authority to directly or indirectly manage groundwater resources. Groundwater management is accomplished at the local level by groundwater conservation districts. Even if the commission were required to create a groundwater conservation district in a PGMA because local groundwater management decisions have not been made to address identified critical groundwater problems, TWC, Chapter 35 requires county commissioners courts to appoint temporary directors for the district, and the subsequent district directors would be elected. It is this local board of directors that would develop and adopt the policies, plans, and rules for the district to manage groundwater resources, and not the state. No change has been made to the rules as a result of these comments.

Comment

An individual from Rusk County commented that many oil wells in the East Texas Oil Field were not completed with surface casing extending below the base of the Carrizo-Wilcox Aquifer. He noted that insufficient plugging of such wells allows for contamination by the co-mingling of fresh groundwater with groundwater from poorer-quality zones. He recognized the authority, jurisdiction, and rules of the Railroad Commission of Texas (RCT) and requested the commission to assist landowners in protecting groundwater supplies.

Response

The commission acknowledges this comment regarding the protection of groundwater resources. As noted by the commentor, the protection of groundwater quality for oil, gas, and other mineral exploration activities is the responsibility of the RCT. The

commission assists the RCT by providing letters of recommendation as to the occurrence and depth of usable-quality groundwater in conjunction with approval of various activities regulated by the RCT. These activities include underground injection of oil and gas wastes, plugging and testing of inactive wells, and exploration and productions of oil, gas, and other minerals. The commission historically provides over 10,000 such surface casing recommendations annually to the RCT and the energy industry. These recommendations are available to the public upon request. No change has been made to the rules as a result of this comment.

Comment

An individual from Cherokee County supported establishment of the proposed ETGMA, noted the importance and need for water conservation education and prevention of waste of water resources, and supported the eventual establishment of a groundwater conservation district. A second individual from Smith County supported the proposal. This individual favored doing everything within her power to protect groundwater resources and supported local decision making by landowners on groundwater management issues. SCWD#1 did not comment for, or against the proposal but supported the eventual formation of a groundwater conservation district to protect the groundwater resources of the area. GLPC from Anderson, Cherokee, Henderson, and Smith Counties commented that they supported the proposal and supported the recent creation and confirmation of the Neches and Trinity Valleys Groundwater Conservation District.

Response

The commission acknowledges these comments. The commission notes that TWC, §36.0015 provides that groundwater conservation districts are the state's preferred method of groundwater management. Through the authority vested to such districts, groundwater conservation, protection, waste prevention, and educational outreach programs are developed and implemented through local groundwater management decision making. No change has been made to the rules as a result of these comments.

Comment

RWPG I commented that the proposed rules state that a GMA is necessary for the creation of a groundwater conservation district, but the commission should clarify that other methods of groundwater conservation district creation are available.

Response

The commission recognizes this comment and notes that §294.60(b) states: "A groundwater management area is a prerequisite for the creation of a groundwater conservation district through the TWC, Chapter 36 landowner petition process." The commission may not administratively create a groundwater conservation district if it is not within a GMA (TWC, §36.012(c)). Groundwater conservation districts may also be created by the legislature and territory may be added to existing groundwater conservation districts by petition processes. However, both of these types of groundwater conservation district creation are outside of the commissions jurisdiction and therefore reference to these creation options should not be included the commission rules. No changes to the rule were made in response to this comment.

Comment

Judge Kennedy, RWPG I, and the City of Nacogdoches commented that a petition came out of a single county but resulted in the 27-county proposal. The City of Nacogdoches commented this was disturbing because of locally initiated efforts spanning two years to take action in Nacogdoches and Angelina Counties to manage groundwater resources. Judge Kennedy, RWPG I, and the City of Nacogdoches commented that the proposed ETGMA may be too large and questioned whether the commission had taken an action upon itself that was greater than requested of the petitioners. They questioned why input was not sought from the other counties.

Response

The commission responds that it is required to delineate a GMA with the objective of providing the most suitable area for the management of groundwater resources (TWC §35.004(a)). The commission considered the available information relating to the geology and groundwater resources of the area, and determined that a GMA in Wood County alone would not meet this objective. The commission believes that the most suitable area for management of groundwater resources is the 27-county area which the commission is designating as a GMA. The reasons for this analysis is discussed in detail in this preamble under the headings: "General Stratigraphy," "Geologic Controls," "Groundwater Use," and "Regional Assessment of Groundwater Resources."

The commission, through the publication of the proposal, did seek comment and input from the public. The commission published this proposed GMA in the *Texas Register* as a rulemaking under the APA. The commission requested public comment on the proposal, providing an opportunity for any interested person to provide comment on the extent of the GMA. The standard notification for such rule projects is to accept public comments for a 30-day period; however, the commission decided to accept public comments for a 45-day period for this proposal. Under the rulemaking provisions of the APA, the commission has the option to hold a public hearing in Austin if requested by 25 or more individuals. For this proposal, the commission decided without receiving any formal requests, to hold three public hearings in the area affected by the rulemaking. The commission sent press releases that contained all the pertinent data regarding the hearings, location for obtaining the proposal, and information on how to provide comments to the newspapers, mayors, and county judges in the area. The commission also sent press releases to all newspapers, radio stations, and television stations in every county that might be affected by the proposal and to the State Senators and Representatives from the area. No change has been made to the rules as a result of these comments.

Comment

Judge Kennedy commented that state law governing groundwater management has expanded the authorities of state agencies at the expense of local areas over the last few legislative sessions. The City of Nacogdoches and RWPG I commented that future legislation could take the proposed ETGMA and create a new set of rules that may supercede local decision-making actions that have already been taken. Former Rep. Yost commented that residents should be cautious and aware of future legislation and commission rules and how such future actions may affect "groundwater rights".

Response

The commission disagrees that state law has expanded groundwater authority of state agencies at the expense of local residents. Texas Water Code, Chapter 36 contemplates local

management of groundwater in that landowners may petition the commission for creation of a groundwater conservation district in a GMA. Landowners may also go to the legislature to create a district by special law with the powers they believe are most relevant to the area. These districts, not the commission, are authorized and responsible for managing groundwater resources within their boundaries. The commission agrees that laws can change in the future. If the laws are changed, the commission rules will be changed to reflect those new laws. However, no change has been made to the rules as a result of these comments.

Comment

MWWD commented it was opposed to the development of the proposed ETGMA for a number of reasons. MWWD noted that Ozarka Natural Spring Water Company (Ozarka) had proposed developing well sites in Wood County and that this proposed groundwater production was perceived as exploitation by many citizens. MWWD commented that this proposed activity made citizens aware of groundwater management options and led to the petition for the GMA.

Response

The commission responds that it cannot consider the reason landowners petition for the designation of a GMA. It is required by TWC, Chapter 35, to consider the February 8, 2001 landowner petition and the evidence prepared by the executive director for the designation of the GMA. The petition was found to meet the requirements of TWC, §35.005 (Pre-SB 2) and §294.22, which provide for the landowner petition process for the designation of a GMA. Additionally, SB 2 transfers the jurisdiction for the designation of all future GMAs to the TWDB. Senate Bill 2 mandates that the TWDB designate GMAs for all of the state's major and minor aquifers by September 1, 2003. No change has been made to the rules as a result of these comments.

Comment

MWWD commented that the proposed Ozarka well sites would be completed in the Sparta Aquifer. MWWD commented that the Sparta Aquifer locally occupies topographic highs in Wood County; was recharged by precipitation; and was discharged by wells, springs, and evaporation. MWWD commented that the Sparta Aquifer does not cover the entire northeast Texas area. MWWD commented that the Sparta Aquifer was a water-table aquifer, not an artesian aquifer.

Response

The commission agrees that the Sparta Aquifer occupies topographic highs in Wood County; is recharged by precipitation; and is discharged by wells, springs, and evaporation. The commission agrees that the Sparta Aquifer does not cover the entire northeast Texas area. (See analysis in this preamble under the headings: "General Stratigraphy," "Geologic Controls," and "Regional Assessment of Groundwater Resources.") However, the commission disagrees that the Sparta Aquifer is solely a water-table aquifer. The Sparta Aquifer is an unconfined aquifer in areas, both locally and regionally, where the Tertiary-age Sparta Formation of the Claiborne Group is exposed at the surface. In areas, both locally and regionally, where the Sparta Formation is overlain by confining sediments or geologic units, the Sparta Aquifer is artesian. As discussed earlier in the preamble, the Sparta Aquifer is also an important groundwater resource within the geographic area contained in the adopted GMA and to leave this resource out of the area would not facilitate the comprehensive management of groundwater resources within the area. The designation of the GMA by the adopted new rules delineates an area where regional groundwater management planning for these overlapping aquifers can be coordinated by existing and any future groundwater conservation districts. No change has been made to the rules as a result of these comments.

Comment

MWWD commented that the Sparta Aquifer does not offer recharge to the Carrizo-Wilcox Aquifer. LWWD did not comment for or against the proposed rules, but did comment that there was little migration of water between the different aquifers. LWWD also commented that the recharge zones of the Carrizo-Wilcox Aquifer were distant to the "main part" of the aquifer.

Response

The commission agrees that the recharge zones of the Carrizo-Wilcox Aquifer can be distant from the artesian portion of the aquifer in and on the flanks of the East Texas structural basin. Precipitation primarily recharges the aquifer in areas where it crops out to the northeast and west of the East Texas structural basin. The commission partially agrees with the comments related to the movement of water between the aquifers. The commission notes that the Weches Formation of the Claiborne Group acts as a restrictive barrier between the Sparta Aquifer and the underlying Queen City Aquifer and the Reklaw Formation of the Claiborne Group acts as a restrictive barrier between the Queen City Aquifer and the underlying Carrizo-Wilcox Aquifer. However, existing data are not sufficient to quantify the movement or volume of water that migrates between the aquifers. The Queen City and Sparta Aquifers are also important groundwater resources within the geographic area contained in the adopted GMA and to leave these resources out of the area would not facilitate the comprehensive management of groundwater resource within the area. The designation of the GMA by the adopted new rules delineates an area where regional groundwater management planning for these overlapping aquifers can be coordinated by existing and any future groundwater conservation districts. No change has been made to the rules as a result of these comments.

Comment

MWWD noted that the Carrizo-Wilcox Aquifer was not a high-producing aquifer in any one location and it was unusual to find a Carrizo-Wilcox well that could produce over 400 gallons per minute in northeast Texas. MWWD noted that irrigation agriculture was not economically feasible in Wood County because the aquifer could not support such activity. MWWD commented that it would be uneconomical for Dallas or any other large municipality to transport groundwater out of the area because the aquifers would not yield water fast enough. MWWD commented that the aquifers would not be attractive for exploitation because pumping cost and well construction cost are too high.

Response

The commission disagrees with these comments and responds that existing data shows significant use is already being made of the groundwater resources in the ETGMA. Significant pumpage from the aquifers provides groundwater for various uses both locally and regionally. The commission must only consider what is the best area for the management of groundwater resources when designating a GMA, not whether some wells produce or do not produce large amounts of water, the feasibility for irrigated

agriculture, groundwater pumpage costs, or the economics of utilizing groundwater supplies. The purpose of the adopted rulemaking is to provide the most suitable boundary for the management of the groundwater resources. Groundwater conservation districts that are located in a common GMA are required under TWC, §36.108 to coordinate groundwater management planning for conservation of the common groundwater resources. The designation would facilitate joint management planning among groundwater conservation districts that share the same aquifers. Also, a GMA is a prerequisite for the creation of a groundwater conservation district through the TWC, Chapter 36 landowner petition process. No change has been made to the rules as a result of these comments.

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §35.004, which gives the commission authority to designate GMAs after September 1, 2001 if a petition has been filed and accepted prior to the date.

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 February 15, 2002.

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE
SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.32 - 321.35, 321.39, 321.48, 321.49

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §321.32, Definitions; §321.33, Applicability; §321.34, Procedures for Making Application for an Individual Permit; §321.35, Procedures for Making Application for Registration; §321.39, Pollution Prevention Plans; and new §321.48, Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs); and §321.49, Dairy Waste Application Field Soil Sampling and Testing. Sections 321.32 - 321.35, 321.39, 321.48, and 321.49 are adopted *with changes* to the proposed text as published in the September 28, 2001 issue of the *Texas Register* (26 TexReg 7482).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purpose of the adopted amendments and new sections is to implement the following legislation from the 77th Legislature, 2001: House Bill (HB) 2912, an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties, Article 12, Regulation of Certain Animal Feeding Operations; Senate Bill (SB) 2, an act relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties, Article 8, Concentrated Animal Feeding Operations; and SB 1339, an act relating to requiring owners or operators of poultry facilities to implement and maintain certified water quality management plans.

House Bill 2912, Article 12, added Texas Water Code (TWC), Chapter 26, Subchapter L, relating to Protection of Certain Watersheds, which regulates certain CAFO wastes and sets forth waste application field soil sampling and testing requirements. Senate Bill 2, Article 8, amended TWC, §26.0286, relating to Procedures Applicable to Permits for Certain Concentrated Animal Feeding Operations, which establishes the requirement that the TNRCC process an application for authorization to construct or operate any CAFO located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit. Senate Bill 1339, §3, basically exempts certain poultry operations from the commission's CAFO rules.

The adoption also includes grammatical revisions to conform with *Texas Register* style requirements and other administrative revisions to all sections.

SECTION BY SECTION DISCUSSION

Adopted §321.32 is amended to define, in a manner consistent with HB 2912 and SB 2, the terms "historical waste application field" under paragraph (16); "major sole-source impairment zone" under paragraph (21); "new CAFO" under paragraph (23); "protection zone" under paragraph (33); and "sole-source surface drinking water supply" under paragraph (37), which has been renumbered from the proposed paragraph (38). In addition, the acronym "NRCS" has been added under paragraph (22) after Natural Resources Conservation Service. "25-year, 24-hour rainfall event/25-year event" has been renumbered as paragraph (38), to adopt the definitions in alphabetical order.

Adopted §321.33 is amended to add the phrase "including all poultry operations as described in TWC, §26.302" in subsection (d) in order to implement requirements of under SB 1339. This implements the aforementioned statute by conditionally excluding certain poultry operations from the CAFO requirements of this subchapter. Section 321.33 is also amended to add new subsections relating to applicability of certain requirements under Chapter 321, Subchapter B. Under §321.33(q), the applicability statement states that §321.48, Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs) and §321.49, Dairy Waste Application Field Soil Sampling and Testing, apply to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32. Under §321.33(r), CAFOs located or proposed to be located within the protection zone of a sole-source surface drinking water supply must obtain authorization to construct or operate through the individual permit process and the individual permit application must be filed by the owner or operator for any new permit or for any major amendment or renewal of an existing permit. Under §321.33(s), the commission is required to process an

application for a CAFO located or proposed to be located within the protection zone of a sole-source surface drinking water supply as an individual permit under TWC, §26.028, relating to Action on Application, subject to the procedures provided by TWC, Chapter 5, Subchapter M, relating to Environmental Permitting Procedures. The individual permit requirement is triggered if, on the date the executive director (ED) determines that the application is administratively complete, any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located in the protection zone of a sole-source surface drinking water supply.

Adopted §321.34(a) contains only grammatical revisions to conform with *Texas Register* style requirements and other administrative revisions.

Adopted §321.35(c) is amended to add an exception to the sentence which allows certain facilities to apply for a state-only registration, or transfer from an individual permit to a registration. Because the CAFOs regulated under §321.48 must obtain an individual permit, the phrase "Except as provided in §321.33(r) of this title (relating to Applicability) and §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations," is added at the beginning of the aforementioned sentence. Section 321.35(c) is also amended to add paragraphs (14) and (15), which require applications for CAFOs confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, to include documentation showing whether or not they are located in a major sole-source impairment zone or a protection zone of a sole-source surface drinking water supply.

Adopted §321.39(f)(28)(G) is amended to add the opening phrase "Except as provided under §321.49 of this title (relating to Dairy Waste Application Field Soil Sampling and Testing);" add the phrase "an employee of the" prior to "NRCS"; add the phrase "a nutrient management specialist certified by NRCS"; change "Texas Agricultural Extension Service" to "Texas Cooperative Extension"; and insert the phrase "after approval by the executive director based on a determination by the executive director that another person or entity identified in this subparagraph cannot develop the plan in a timely manner" at the end of the first sentence. The last sentence in this subparagraph is amended to read as follows: "The CAFO operator shall ensure that the nutrient utilization plan, at a minimum, evaluates and addresses the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality:".

Adopted new §321.48 addresses the regulation of new CAFOs and CAFOs increasing the number of animals confined under an existing operation that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone. Because adopted subsection (a) clearly limits the applicability of this section to dairy CAFOs in a major sole-source impairment zone, all superfluous occurrences of the word "dairy" have been removed from the proposed text, under subsections (a) and (b). Adopted subsection (a) also has been reformatted for clarity. Subsection (b) requires an owner or operator of such a CAFO to submit a permit application and obtain a new or amended individual permit prior to constructing or operating the new CAFO or increasing the number of confined animals. Subsection (c) states that nothing in this section limits the commission's authority to include in an individual or general permit under this subchapter provisions necessary to protect a water resource in this state. Subsection (d) sets out permit requirements, by stating that any permit to which this section applies must, at a minimum, provide for management and disposal of waste in accordance with Chapter 321, Subchapter B. The permit must also require that 100% of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be: beneficially used outside of the watershed; disposed of in landfills outside of the watershed, subject to commission rules relating to industrial solid waste; delivered to a composting facility approved by the ED; put to another beneficial use approved by the ED; or applied in certain alternative ways as set out in the rule. If applied, the manure application must meet any combination of three sets of requirements or options. The first option is that if it is applied to a waste application field that is not a historical waste application field owned or controlled by the owner of the CAFO, then it must be applied in accordance with the requirements of §321.39, relating to Pollution Prevention Plans, and §321.40, relating to Best Management Practices. The other options involve application to a historical waste application field that is owned or operated by the owner or operator of the CAFO, as follows: Option 2.) if the soil has 200 parts per million (ppm) or less extractable phosphorus in the soil, then it must be applied in accordance with the aforementioned pollution prevention plan and best management practice requirements; and Option 3.) if the soil has more than 200 ppm extractable phosphorus, it must be applied in accordance with a detailed nutrient utilization plan (NUP) approved by the ED which, at a minimum, meets the requirements of §321.39(f)(28)(G). Under adopted §321.48(d)(2)(E)(i) and (ii), the redundant and unnecessary phrase "pollution prevention plan" has been deleted from the proposed text. Under adopted §321.48(d)(E)(iii), the word "then" has been corrected to "than."

Under adopted §321.48(e), the detailed NUP required under §321.48(d) must be developed by: an employee of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS); a nutrient management specialist certified by the United States Department of Agriculture's NRCS; the Texas State Soil and Water Conservation Board; the Texas Cooperative Extension; an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or a professional agronomist or soil scientist certified by the American Society of Agronomy after approval by the ED based on a determination by the ED that another person or entity listed as the first five options cannot develop the plan in a timely manner.

Adopted new §321.49 relates to dairy waste application field soil sampling and testing, and applies to CAFOs that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone, as defined in §321.32. Because adopted subsection (a) clearly limits the applicability of this section to dairy CAFOs in a major sole-source impairment zone, all superfluous occurrences of the word "dairy" have been removed from the proposed text, under subsections (a) - (c). Under adopted subsection (b), for new CAFOs or CAFOs increasing the number of animals, the waste application field soil sampling and testing requirements must be implemented concurrently with the next required annual soil sampling date established in the pollution prevention plan. Subsection (c) requires existing CAFOs not increasing

the number of animals to implement these requirements concurrently with the next required annual soil sampling date established in the pollution prevention plan, beginning six months after the effective date of this adoption. Adopted §321.49(d) requires the CAFO operator to contract with a person described in §321.48(e), who is approved by the ED, to collect one or more representative composite soil samples from each waste application field, including each historical waste application field, to ensure compliance with subsection (f) of this section, and requires the CAFO operator to have sampling under subsection (d)(1) of this section performed in accordance with the requirements of §321.39 not less often than once every 12 months, in accordance with the procedures in §321.39(f)(28)(A) - (D). Under adopted §321.49(d)(2), the redundant and unnecessary phrase "pollution prevention plan" has been deleted from the proposed text. Under adopted subsection (e), the CAFO operator shall ensure that each sample collected under subsection (d) is tested in accordance with the applicable requirements of §321.39(f)(28)(A) - (F) and be tested for any other nutrient designated by the ED. Under subsection (f), the CAFO operator shall ensure that the analytical results from the testing performed under subsection (e) of this section are submitted to the ED and that a copy is submitted to the local TNRCC regional office and the operator of the CAFO within 60 days of the sampling. Under subsection (g), if the samples tested under subsection (e) show a phosphorus level in the soil of more than 500 ppm, the operator must file with the ED a new or amended NUP with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e). Under subsection (h), if the samples tested under subsection (e) show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm, the operator must file with the ED a certified new or amended NUP with a phosphorus reduction component, or show that the level is supported by a certified NUP. Finally, under subsection (i), if the owner or operator of a waste application field is required by this section to have a NUP with a phosphorus reduction component, and if the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration, then the owner or operator is subject to enforcement action at the discretion of the ED. Adopted subsection (i) is changed from proposal by replacing "subsection (g) or (h)" with "this section," in order to more closely track the following statutory language of TWC, §26.504(e): "The owner or operator of a waste application field required by this section to have...." The rule also requires the ED, in determining whether to take an enforcement action, to consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction including, but not limited to, an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. The adoption does not meet the definition of "major environmental rule" for several reasons. First, these rules are primarily procedural in nature, dealing largely with application requirements for CAFOs, and requiring certain CAFOs to obtain individual permits. It should be noted that the commission's rules currently allow the ED to require a CAFO to apply for an individual permit if the operation is located near surface water resources. Therefore, the requirement to apply for an individual permit is not a new requirement, and thus the adopted rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state. Finally, because the adopted rules deal primarily with application requirements, they are procedural in nature and would not adversely affect the environment, or the public health and safety of the state or a sector of the state. One aspect of the rulemaking which is not a procedural requirement relates to the soil sampling and testing requirements. These requirements do not represent a significant burden so as to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because CAFOs are already required to perform annual soil sampling of land application fields under existing rules.

In addition, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. This adoption does not exceed a standard set by federal law because there are no such corresponding federal standards. This adoption does not exceed an express requirement of state law because it is specifically required by TWC, Chapter 26, Subchapter L; by TWC, §26.0286; and by SB 1339. This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the September 14, 1998 "Memorandum of Understanding between the United States Environmental Protection Agency and the TNRCC" which authorizes the commission to implement the National Pollutant Discharge Elimination System (NPDES) permitting program in Texas, requires CAFOs, as defined in the federal Clean Water Act, to obtain Texas Pollutant Discharge Elimination System authorization but does not specify whether the authorization must be through an individual permit, registration under a permit-by-rule, or through a general permit. This rulemaking does not adopt a rule solely under the general powers of the agency, but rather under specific state law (i.e., TWC, §26.0286, which requires the commission to use certain procedures for processing applications for certain CAFOs, and TWC, Chapter 26, Subchapter L).

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The purposes of the rules are to implement the requirements of TWC, Chapter 26, Subchapter L, which regulates certain CAFO wastes and sets forth waste application field soil sampling and testing requirements; TWC, §26.0286, which establishes the requirement for an individual permit for any CAFO located in the protection zone of a sole-source surface drinking water supply; and SB 1339, which basically exempts certain poultry operations from the commission's CAFO rules. The rules substantially advance this stated purpose by requiring certain CAFOs in a major sole-source impairment zone to obtain an individual permit, to manage or beneficially use waste in a specified manner, and to sample and test the soil on their waste application fields; by defining "protection zone" and "sole-source surface drinking water supply" and by requiring an individual permit for any CAFO located in the protection zone of a sole-source surface drinking water supply; and by exempting certain poultry operations from the commission's CAFO rules.

Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules primarily because the rules are primarily procedural in nature. For example, a CAFO facility located within the protection zone would still be able to operate, but only after obtaining an individual permit rather than another form of authorization such as a registration. These rules are not anticipated to affect private real property because they do not prohibit or restrict a CAFO from operating within a protection zone. They simply require the facility to follow different procedures for obtaining authorization to construct or operate. Furthermore, CAFOs located near surface water resources are already required to prevent the likelihood of inadvertent discharges and to ensure that permitted discharges do not degrade water quality. One aspect of the rules which is not procedural in nature relates to the soil sampling and testing portion, which does not represent a significant burden because CAFOs are already required to perform annual soil sampling of land application fields under existing rules. Therefore, these rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the adopted rules include the protection, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRA) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rules include the following: 1.) discharges shall comply with water-quality-based effluent limits; 2.) discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3.) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because any new proposed CAFO located within one mile of a CNRA will be required to pursue an individual permit which will allow the commission to consider the effects of such a facility on the CNRA; establish effluent limits, if necessary, on any discharges from the proposed facility to maintain applicable water quality standards; and allow opportunity for notice, public comment, and public hearing.

HEARINGS AND COMMENTERS

Public hearings on this proposal were held in Austin on October 23, 2001; Waco on October 25, 2001; and Stephenville on November 5, 2001. The public comment period was scheduled to close on November 12, 2001; however, the United States Postal Service celebrated the Veterans Day holiday on November 12, 2001, therefore the comment period was extended until 5:00 p.m. on November 13, 2001. Written comments were submitted by: State of Texas House Representative Kip Averitt (Representative Averitt); Dairy Farmers of America, Inc., Southwest Area Council (Dairy Farmers of America); Sierra Club, Lone Star Chapter (Sierra Club); Potts & Reilly, L.L.P., on behalf of the Texas Association of Dairymen (TAD); Texas Cattle Feeders Association (TCFA); Texas Department of Transportation (TxDOT); Texas Farm Bureau; Texas Poultry Federation; Texas Sheep & Goat Raisers Association (TSGRA); and City of Waco. Oral comments were provided during the hearings by Ken Horton, on behalf of the Texas Pork Producers Association; Wiley Stem, on behalf of the City of Waco; Jane Mashek, on behalf of State of Texas House Representative Jim Dunnam; Bob Wallace, on behalf of the Wallace Group; James Terrell, on behalf of TAD; and four individuals.

RESPONSE TO COMMENTS

General

TAD expressed its belief that HB 2912, Article 12, was intended to strike a balance between the dairy industry in the Bosque River watershed and downstream interests in water quality. TAD also expressed its belief that the commission proposal for the most part appears to have respected the delicate compromise that was negotiated during the legislative process between the City of Waco, the commission, and the dairies. TAD stated that it is mindful that there are those who are urging the commission to exceed its statutory authorization, and urged the commission to continue to respect the aforementioned compromise.

The commission responds that it adopts these rules in order to comply with the legislative directives, as previously explained in this preamble, without exceeding or falling short of its statutory authorization.

Section 321.32 - Definitions

TCFA and TSGRA commented that the definition of "historical waste application field" under proposed §321.32(16) should be modified by adding the word "dairy," so that the definition would read as follows: "An area of land located in a major sole-source impairment zone, as defined in this section, that at any time since January 1, 1995, has been owned or controlled by an operator of a dairy concentrated animal feeding operation (CAFO) on which agricultural waste from a CAFO has been applied." The commenters stated that the concept of a historical waste application field applies only to dairies in the Bosque River watershed.

The commission has made no change to the proposed text in response to these comments. First, the proposed definition is worded exactly as it is found under TWC, §26.501. Therefore, if the commenters suggestion were to be adopted, the commission would be restricting the definition. The commission believes that the commenters concerns are adequately addressed by the applicability statements under adopted §321.33(q), which states that §321.48 and §321.49 apply to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32.

The City of Waco commented that it is implicit that the purpose of the definition of "historical waste application field" is to identify application fields in use at any time since January 1995, and that the term "controlled" should include any application fields that are owned or operated by persons other than the owner of the CAFO(s) generating the waste. The commenter requested a clarification that the definition should apply to any waste application field within the major sole-source impairment zone, including those that may be under contract or other arrangement to a CAFO owner to receive and dispose of waste (i.e., third-party operations).

The commission has made no change to the proposed text in response to this comment, and believes that the definition of "historical waste application field" accurately reflects the statutory definition. The statutory definition requires that, to be a historical waste application field, it must have been at any time since January 1, 1995, owned or controlled by an operator of a CAFO and upon which agricultural waste from a CAFO has been applied. Third-party fields which have not, since January 1, 1995, been owned or controlled by an operator of a CAFO, cannot meet the definition of "historical waste application field." If a third-party field is under contract to a CAFO that gives the CAFO operator control of the field, then it may qualify as a historical waste application field, subject to a case-by-case determination by the ED.

The Sierra Club expressed concern that the regulation of certain dairies in major sole-source impairment zones pertains only to those in the Bosque River watershed, and posed the question of whether the Leon River watershed is considered to be a "major sole-source impairment zone." The commenter stated the opinion that the rules regarding provisions for waste management, soil testing, NUPs, and individual permits should apply to both the Bosque and Leon River watersheds.

The commission has made no changes to the proposed text in response to this comment. Under HB 2912, §12.02 and under proposed §321.32(21), "major sole source impairment zone" is defined in such a way as to include only the Bosque River watershed.

The City of Waco commented that under §321.32(33), the term "normal pool elevation" means the top of the conservation or water supply pool of the reservoir. The Texas Pork Producers Association requested clarification of the term "normal pool elevation."

It is the intent of the commission to establish a standard elevation of sole-source reservoirs for permitting purposes. The commission notes that "normal pool elevation" values are readily available on standard United States Geological Survey 7 1/2-minute series topographic maps, and means "the elevation of the inlet or control point of the principal spillway."

The City of Waco commented that under §321.32(33), the protection zone should include areas where any stream that contributes to flows to a sole-source surface drinking water supply, including intermittent streams.

The commission has made no changes to the proposed text in response to this comment, and believes that the definition of "protection zone" accurately reflects statutory requirements. The commission notes that intermittent streams are not a consideration in determining the protection zone.

The City of Waco asked several questions concerning the definition of "protection zone," including what areas would be excluded from the definition. The commenter stated that the term "sole-source surface drinking water supply river" needs to be defined. The commenter also stated that protection zone areas should include the entire area contributing runoff to water supply users downstream. Finally, the commenter asked if the TNRCC could provide a map locating the boundaries of the protection zones within the North Bosque River watershed.

The commission has made no changes to the proposed text in response to these comments and questions, and believes that the definition of "protection zone" accurately reflects statutory requirements. A sole-source surface water drinking water supply river is a river which meets the definition of "sole-source surface drinking water supply." With regard to any specific maps, the commission expects that for illustrative purposes only, the ED will provide such information as resources and time after adoption of these rules allow.

Dairy Farmers of America, TCFA, and TSGRA commented that under proposed §321.32(38), the definition of "sole-source surface drinking water supply" should be modified to include the phrase "has been designated by commission order as a sole source surface drinking water supply because...." The commenters urged the commission to adopt a rule providing for adoption by order any updates to the sole-source list on a semi-annual or quarterly basis, so that applicants will know well in advance whether they should file an application for a registration or an individual permit. The Texas Farm Bureau recommended that the definition contain a reference to an appendix that contains the current list of sole-source surface drinking water supply water bodies, and that the appended list be updated on a regular basis. The Texas Pork Producers Association expressed concern with the designation of sole-source surface drinking water supplies as it relates to when the list is published or how it is published. This commenter expressed concern that the commission needs to have a static list of sole-source surface drinking water supplies, as opposed to something that can change frequently.

The commission has made no changes to the proposed text in response to these comments. The commission believes that the adopted definition fulfills the statutory requirement that "the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections." The commission expects that the ED will make the list of sole-source surface drinking water supplies available upon request, and that in order to accurately and appropriately reflect the current status of surface drinking water supplies, the ED will update the list frequently. The commission notes that there is no provision in the statutory language to maintain a more static list so that applicants will know well in advance whether they should file an application for a registration or an individual permit.

The Texas Pork Producers Association commented concerning the definition of "sole-source surface drinking water supply" under proposed §321.32(38). The commenter posed an example and asked if 95% of a water supply on a regular basis is brought in from one particular reservoir and 5% is brought in from a well, then at different times throughout the year they shut off the well and draw 100% of the water supply from the reservoir, would that qualify it as a sole-source surface drinking water supply (assuming there were no other connections, exclusive of emergency water connections)?

The commission responds that under the conditions given by the commenter, the reservoir would not qualify as a sole-source surface drinking water supply.

Dairy Farmers of America commented that the rules should be clarified concerning the number of "mature animals" on the CAFO, taking into consideration the size and weight if that animal is being counted as a mature animal. The commenter stated that the issue becomes critical to the CAFO owner or operator when an investigator inventories head of cattle on the CAFO relative to permit limits, and that if an erroneous inventory is recorded due to the inconsistent method of inventorying animals, the owner or operator is unjustly held liable.

The commission has made no changes to the proposed text in response to this comment. The commission's rules under §321.32(3), (4), and (9) do not expressly exclude animals based on age, but specifically mention "slaughter or feeder cattle" (of any age or gender), "mature dairy cattle (whether milkers or dry cows)," "horses," "sheep," "laying hens or broilers," "slaughter steers," "heifers," and other animals. The rules are written in terms of operations at which animals "have been, are, or will be stabled or confined and fed or maintained." The ED, therefore, would count all those animals confined at a facility to determine compliance with a permit.

The Sierra Club commented that there appears to be no definition of "beneficial use" of waste as prescribed in proposed §321.48(d), and stated that this potentially creates a loophole for certain waste management practices. TAD asked for a definition of "beneficial use."

The commission has made no changes to the proposed text in response to this comment, and expects that the ED, on a case-by-case basis, will determine whether a particular use constitutes "beneficial use."

Section 321.33 - Applicability

The Texas Poultry Federation commented that under §321.33(r), the requirement for any CAFO located within the protection zone of a sole-source drinking water supply to apply for an individual permit is overly burdensome for the CAFO industry and the TNRCC. The commenter stated that the requirement for individual permits should only be used when it is shown that the general permit process, CAFO best management practices, and total maximum daily load implementation plans cannot provide adequate water quality protection.

The commission has made a clarifying change to the proposed text in response to this comment by adding a reference to §321.33(d), so that this conditional exemption is referenced under §321.33(r) in the following manner: "Subject to the requirements of subsection (s) of this section, and except as provided in subsection (d) of this section, the following requirements apply...." The commission notes that certain individual permits are required by the statutory language, and believes that the adopted rule accurately reflects these statutory requirements.

TAD commented that under proposed §321.33(r)(2)(B), the owner or operator shall file an individual permit application for any renewal in accordance with the applicable requirements under §321.34, and questioned the commission's authority to require an individual permit for renewals of existing and non-expanding CAFOs.

The commission has made no changes to the proposed text in response to this comment. Adopted §321.33(r)(2)(B) reflects the statutory language from SB 2, §8.01, which states, "The commission shall process an application for authorization to construct or operate a concentrated animal feeding operation as a specific permit under Section 26.028 subject to the procedures provided by Subchapter M, Chapter 5, if, on the date the commission determines that the application is administratively complete, any part of a pen, lot, pond, or other type of control or retention facility or structure of the concentrated animal feeding operation is located or proposed to be located within the protection zone of a sole-source surface drinking water supply. For the purposes of this subsection, a land application area is not considered a control or retention facility." The commission notes that an application for renewal of a CAFO authorization is "an application for authorization to construct or operate a concentrated animal feeding operation."

Dairy Farmers of America, TCFA, and TSGRA commented that under proposed §321.33(s), the trigger date for determining whether an application should be processed as an individual permit should be changed from the date the application is determined by the ED to be administratively complete to the date the application is filed.

The commission has made no change to the proposed text in response to these comments. Under TWC, §26.0286(b), the appropriate date is "the date the commission determines that the application is administratively complete."

Section 321.39 - Pollution Prevention Plans

The Wallace Group commented that most of the persons listed under §321.39(f)(28)(G) to develop the NUPs are persons or entities that have no liability to the public, to third parties, or even to their client. The commenter requested that some responsibility and accountability be provided.

The commission has made changes to the proposed text in response to this comment. Under adopted §321.39(f)(28)(G), the last sentence is revised by adding "CAFO operator shall ensure that the" and revising the sentence grammatically to read as follows: "The CAFO operator shall ensure that the nutrient utilization plan, at a minimum, evaluates and addresses the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality:". In a similar vein, §321.49 has been revised to incorporate enforceability concerns, because the persons responsible for collecting the soil samples under §321.49 are the same persons responsible for development of the NUPs. Under adopted §321.49(e), the phrase "The CAFO operator shall ensure that" is added at the beginning of the sentence. Adopted §321.49(f) is changed to read as follows: "The person who performs the testing under subsection (e) of this section shall submit the analytical results to the executive director and shall submit a copy to the appropriate commission regional office and the operator of the CAFO within 60 days of the sampling."

The City of Waco commented that there is a conflict between §321.39(f)(28)(G) and §321.49(h)(2). The commenter stated that in effect, §321.49(g) and (h) provides a 500 ppm limit on soil phosphorus, and subsection (h) allows a NUP to "support" a phosphorus level greater than 200 ppm. The commenter stated that the trigger for causing submittal to the ED of a new or amended NUP with a phosphorus reduction component should be 200 ppm to be consistent with §321.39(f)(28)(G).

The commission sees no conflict between §321.39(f)(28)(G) and §321.49(h)(2). Both require a NUP for application of waste on areas of land with levels of phosphorus greater than 200 ppm. Nevertheless, the commission has adopted a clarifying exception statement at the beginning of the first sentence in §321.39(f)(28)(G) in response to this comment, as follows: "Except as provided under §321.49 of this title (relating to Dairy Waste Application Field Soil Sampling and Testing)," in order to provide a cross-reference to additional rules applicable to certain operations.

Section 321.48 - Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)

The City of Waco commented concerning proposed §321.48(d)(2)(D)(i) - (iii), and noted that the phrase "owned or controlled by the owner of the CAFO" is used in clause (i), while

the phrase "owned or operated by the owner or operator of the CAFO" is used in clauses (ii) and (iii), in referring to waste application fields. The commenter asked why there is such a distinction made here, and also asked if the requirements of clauses (ii) and (iii) apply to application fields that are controlled by the CAFO owner or operator.

The commission responds that the distinction is made because it is the statutory language. The commission also responds that the requirements of clauses (ii) and (iii) apply to application fields that are controlled by the owner or operator of the CAFO, if they are also owned or operated by the owner or operator of the CAFO.

TAD requested that the commission clarify that all the options for removal of manure set forth by the legislature are included in the rule. The commenter noted that the legislature set forth a menu of options for producers to manage their manure in various ways, all of which are protective of the environment. The commenter noted that the proposed rule did not include the statutory option of disposal outside the watershed. TAD also commented that the proposed language "beneficially used outside of the watershed" does not appear in the statute, but rather the statute allows for the manure to be "disposed of or used outside of the watershed."

The commission has made changes to the proposed text in response to this comment. First, under adopted §321.48(d)(1), the proposed phrase "beneficially used" has been replaced by the word "disposal," in order to reflect the statutory language. Second, a new option has been provided under adopted §321.48(d)(2)(B), which is "disposed in landfills outside of the watershed, subject to the requirements of commission rules relating to industrial solid waste." The adoption still retains the option of beneficial use outside of the watershed because the commission interprets the word "used" under TWC, §26.503(b)(2)(B) to mean "beneficially used."

TAD commented that the statute allows for land application on land owned or controlled by the owner of the CAFO if the field is not a historical application field "as directed by the commission," and noted that the proposal includes the option of application on a nonhistorical application field but only if it meets the requirements concerning pollution prevention plans and best management practices. The commenter requested clarification if it is the commission's intention to assume jurisdiction over third-party application fields by requiring pollution prevention plans and best management practices on third-party fields. The commenter questioned that if this is the case, wouldn't this rule force the use of historical fields and prevent expansion of dairies, and use of new farm land that might need a beneficial soil amendment.

The commission has made no changes to the proposed text in response to this comment. The commission notes that under adopted §321.48(d)(2)(E)(i), application is conditionally allowed on a waste application field owned or controlled by the owner of the CAFO, if the field is not a historical waste application field. This adoption reflects the statutory language under TWC, §26.503(b)(2)(C), which states, "applied as directed by the commission to a waste application field owned or controlled by the owner of the concentrated animal feeding operation, if the field is not a historical waste application field." It would not appear that a third-party field could be owned by the CAFO owner and still be called a third-party field. If a so-called third-party field is controlled by the CAFO owner, then these rules would appear to apply. The commission does not believe that the adopted rule forces the use of historical fields.

TAD requested clarification concerning the requirements for a NUP with regard to application on a historical waste application field, because certain proposal preamble language seemed to indicate that a NUP may be required for all such application. TAD also asked whether the commission intends to require a NUP for nonhistorical application sites.

The commission responds that a NUP is not explicitly required under adopted §321.48(d)(2)(E)(ii) for application on a historical waste application field that is owned or operated by the owner or operator of the CAFO. However, adopted §321.49(d) requires composite sampling to be conducted at each waste application field, including each historical waste application field, not less often than once every 12 months, and the results must be submitted to the ED showing that the waste application field contains 200 or fewer ppm of extractable phosphorus (reported as P) in the Zone 1 (0 - 6 inch) depth. If the soil samples tested show a phosphorus level greater than 200 ppm of extractable phosphorus (reported as P) in the Zone 1 depth, then the operator shall file a new or amended NUP with the ED. Under adopted §321.48(d)(2)(E)(i), application to nonhistorical application fields owned or controlled by the owner of the CAFO must also be conducted in accordance with the requirements of §321.39 and §321.40. The commission notes that under §321.39(f)(28)(G), when results of the annual soil analysis for extractable phosphorus in §321.39(f)(28)(F) indicate a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any waste or wastewater to the affected area unless the waste or wastewater application is implemented in accordance with a detailed NUP. The commission has amended §321.49(d)(1) to clarify that the soil sampling requirement applies to each waste application field, including each historical waste application field. Therefore, if the waste application field falls within the definition of "historical waste application field," then composite soil sampling of that field must be conducted not less than once every 12 months even if the field was not used for land application the previous year.

TAD commented that the proposed removal options do not include application to a nonhistorical application field that is not owned or controlled by the owner of the CAFO, and asked whether the commission is prohibiting land application on third-party fields.

The commission responds that there is no permit option under the statute or the adopted rule for application to a nonhistorical application field that is not owned or controlled by the owner of the CAFO, if the field is inside the watershed. This adoption reflects the statutory language under TWC, §26.503(b). If the field is outside of the watershed, then an option exists under adopted §321.48(d)(2)(A) for beneficial use.

TAD commented that for CAFOs in the Bosque River watershed, an individual permit would not be required for renewal of a registration for an existing facility without an expansion or any major modification.

The commission responds that §321.48 applies to new dairy CAFOs and to dairy CAFOs increasing the number of animals confined under an existing operation that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone. Section 321.48 requires that the owner or operator shall submit a permit application and obtain a new or amended individual

permit prior to: 1.) constructing or operating a new dairy CAFO, as defined in §321.32 of this title; or 2.) increasing the number of dairy animals confined under an existing operation. Nothing in this section limits the commission's authority to include in an individual or general permit under this subchapter, provisions necessary to protect a water resource in this state. The commission notes that §321.33(r)(2)(B) requires an individual permit application for any renewal in accordance with the applicable requirements under §321.34, for an existing registered or permitted CAFO with any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO located or proposed to be located within the protection zone of a sole-source surface drinking water supply. No changes to the proposed text have been made in response to this comment.

Section 321.49 - Dairy Waste Application Field Soil Sampling and Testing

Representative Averitt stated that it was the intent of the legislature to implement TWC, §26.504, relating to Waste Application Field Soil Sampling and Testing, immediately and urged the commission to revise the implementation date to reflect legislative intent. Representative Dunnam also commented that the soil testing requirements should be implemented immediately. The City of Waco commented that the third-party soil testing requirements should be effective immediately on the effective date of these rules, for all CAFOs in the (Bosque River) watershed. The Sierra Club expressed concern that the proposed rules require existing CAFOs, under proposed §321.49(c), to implement the soil sampling and testing requirements no later than September 1, 2003, when there is an existing problem which should prompt timely implementation. The Wallace Group reiterated the need to start the third-party testing as soon as possible. On the other hand, TAD commented that it concurs with the proposal to require non-expanding existing CAFOs to implement the soil sampling and testing requirements no later than September 1, 2003.

The commission adopts a revision to the proposed text concerning the implementation date for soil sampling and testing by existing dairy CAFOs not increasing the number of animals. The commission believes that immediate implementation is not practical, primarily due to the dearth of individuals that are qualified and available to collect the soil samples. This problem is exacerbated by the fact that these same individuals must develop NUPs. Nevertheless, the commission agrees that an earlier implementation date than September 1, 2003 is appropriate. Therefore, adopted §321.49(c) requires existing dairy CAFOs not increasing the number of animals to implement the requirements of this section concurrent with the next required annual soil sampling date established in the pollution prevention plan, beginning six months after the effective date of these rules.

The City of Waco provided several comments concerning proposed §321.49 and stated that the commission should ensure that application of waste is regulated at a standard equal to or more stringent than the existing requirements for application and soil phosphorus limits as set out in Chapter 321, Subchapter B. The commenter stated that if a waste application field contains extractable phosphorus levels greater than 200 ppm, then application of waste should be suspended until the phosphorus uptake has occurred to such an extent that soil sampling shows the phosphorus level to be below 200 ppm.

The commission has made no change to the proposed text in response to this comment and believes that the adopted rule accurately reflects the applicable statutory requirements of HB 2912, Article 12. The commission notes that neither the existing rules nor the statute contains a requirement that when a waste application field contains extractable phosphorus levels greater than 200 ppm, then application of waste should be suspended until the phosphorus uptake has occurred to such an extent that soil sampling shows the phosphorus level to be below 200 ppm.

The City of Waco commented that under proposed §321.49(i), the discretion of the ED for taking enforcement action is very broad. The commenter noted that the list of mitigating factors that the ED must take into consideration include, but are not limited to, factors ranging from acts of God to variability of soil testing results. The commenter asked, based on the possible arguments against taking an enforcement action, if the ED anticipates any condition under which enforcement would be taken. Finally, the commenter stated that given the number of mitigating factors, and granted the complicated factors involved, it would be more prudent to include in the NUP defined actions that must be undertaken to reduce phosphorus levels within a defined time frame and that enforcement for the case where the soil phosphorous is not reduced be keyed to the compliance with these defined actions and time frames.

The commission has made no changes to the proposed text in response to this comment. First, the language concerning the mitigating factors is statutory language. The statute directs the ED to consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction. The commission expects that the ED will consider each case based on its own merits and that documentation will be required to support the reason(s) given for the lack of phosphorus reduction. The commission notes that §321.39(f)(28)(G) contains requirements for NUP development, implementation, and enforcement, including defined time frames and actions, based on technical criteria related to each waste application field.

Proposal Preamble

TAD questioned the adequacy of the fiscal note and related sections in the proposal preamble, and requested that a local impact statement be prepared. This commenter provided certain anecdotal information to support the commenter's opinions. The City of Waco questioned the proposal preamble language regarding the small business and micro-business assessment.

The commission believes that the proposal preamble fairly and accurately considered the necessary factors, and it is speculative to assume that the preamble is inadequate based on anecdotal information or impacts not directly related to this rulemaking.

STATUTORY AUTHORITY

The amendments and new sections are adopted under TWC, §26.0286, which requires that the TNRCC process an application for authorization to construct or operate a CAFO located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit; TWC, Chapter 26, Subchapter L, which requires that the TNRCC authorize the construction or operation of a new or expanded dairy CAFO located within a major sole-source impairment zone through an individual permit which must contain specific requirements for the management and beneficial use of animal waste, and sets forth waste application field soil sampling and testing requirements that apply to all dairy CAFOs within a major sole source impairment zone; and SB 1339, §3, 77th Legislature, 2001, which states that a poultry operation may not be designated as a point source of pollution unless the poultry operation meets the requirements for designation as a point source under TWC, Chapter 26 or 30 TAC §§321.31 - 321.37. The amendments and new sections are

also adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.013, which establishes the commission's authority over various statutory programs; §26.011, which establishes the commission's authority over water quality in the state; and §26.028, which establishes the commission's authority to approve certain applications for wastewater discharge; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

§321.32. Definitions.

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

(1) Agronomic rates--The land application of animal wastes or wastewater at rates of application which will enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth.

(2) Air contaminant--Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor is not an air contaminant.

(3) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the beneficial use of wastes.

(4) Animal unit--A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of weaned swine weighing 55 pounds or less multiplied by 0.1, plus the number of sheep multiplied by 0.1, plus the number of horses/mules multiplied by 2.0.

(5) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels, permeable sedimentary rocks such as sandstones and limestones, and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(6) Best management practices (BMPs)--The schedules of activities, prohibitions of practices, maintenance procedures, and other management and conservation practices to prevent or reduce the pollution of waters in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, land application, or drainage from raw material storage.

(7) CAFO general permit--A general permit issued or adopted by the commission in accordance with Chapter 26 of the Texas Water Code for the express purpose to regulate discharges from CAFOs on a statewide or geographic basis.

(8) Chronic or catastrophic rainfall event--For the purposes of these rules, these terms shall mean a series of rainfall events which would not provide opportunity for dewatering and which would be equivalent to or greater than the 25-year, 24-hour storm event or any single event which would be equivalent to or greater than the 25-year, 24-hour storm event. Catastrophic conditions could include tornados, hurricanes, or other catastrophic conditions which could cause overflow due to the high winds or mechanical damage.

(9) Concentrated animal feeding operation (CAFO)--Any animal feeding operation which the executive director designates as a significant contributor of pollution or any animal feeding operation defined as follows:

(A) any new and existing operations which stable and confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

(i) 1,000 slaughter or feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds or 10,000 weaned swine weighing 55 pounds or less;

(iv) 500 horses;

(v) 10,000 sheep;

(vi) 55,000 turkeys;

(vii) 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

(viii) 30,000 laying hens or broilers when facility has a liquid waste handling system;

(ix) 5,000 ducks; or

(x) 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds, and sheep;

(B) any new and existing operations covered under this subchapter which discharge pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into the waters in the state, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

(i) 300 slaughter or feeder cattle;

(ii) 200 mature dairy cattle (whether milkers or dry cows);

(iii) 750 swine weighing over 55 pounds or 3,000 weaned swine weighing 55 pounds or less;

(iv) 150 horses;

(v) 3,000 sheep;

(vi) 16,000 turkeys;

(vii) 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

(viii) 9,000 laying hens or broilers when facility has a liquid waste handling system;

(ix) 1,500 ducks; or

(x) 300 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds, and sheep;

(C) poultry facilities that have no discharge to waters in the state normally are not considered a CAFO. However, poultry facilities that use a liquid waste handling system or stockpile litter near watercourses or dispose of litter on land such that stormwater runoff will be transported into surface water or groundwater may be considered a CAFO.

(10) Control facility--Any system used for the retention of wastes on the premises until their ultimate use or disposal. This includes the collection and retention of manure, liquid waste, process wastewater, and runoff from the feedlot area.

(11) Dairy Outreach Program areas--The areas include all of the following counties: Erath, Bosque, Hamilton, Comanche, Johnson, Hopkins, Wood, and Rains.

(12) Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devils River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(13) Edwards Aquifer recharge zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area delineated as such on official maps located in the appropriate regional office and groundwater conservation districts.

(14) Flushwater waste handling system--A system in which freshwater or wastewater is recycled or used in transporting waste.

(15) Groundwater--Subsurface water that occurs below the water table in soils and geologic formations that are saturated, and is other than underflow of a stream or an underground stream.

(16) Historical waste application field--An area of land located in a major sole-source impairment zone, as defined in this section, that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation (CAFO) on which agricultural waste from a CAFO has been applied.

(17) Hydrologic connection--The interflow and exchange between control facilities or surface impoundments and waters in the state through an underground corridor or connection.

(18) Lagoon--An earthen structure for the biological treatment for liquid organic wastes. Lagoons can be aerobic, anaerobic, or facultative depending on their design and can be used in series to produce a higher quality effluent.

(19) Land application--The removal of wastewater and waste solids from a control facility and distribution to, or incorporation into, the soil mantle primarily for beneficial reuse purposes.

(20) Liner--Any barrier in the form of a layer, membrane or blanket, naturally existing, constructed or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.

(21) Major sole-source impairment zone--A watershed that contains a reservoir:

(A) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(B) at least half of the water flowing into which is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended:

(i) at least in part because of concerns regarding pathogens and phosphorus; and

(ii) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

(22) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(23) New CAFO--A CAFO which was not authorized under a rule, order, or permit of the commission in effect on August 19, 1998. For the purposes of §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs), new CAFO means a proposed CAFO, any part of which is located on property not previously authorized by the state to be operated as a CAFO.

(24) No discharge--The absence of flow of waste, process generated wastewater, contaminated rainfall runoff or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall events.

(25) Nuisance--Any discharge of air contaminant(s) including, but not limited to, odors of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(26) Open lot--Pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot, or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

(27) Operator--The owner or one who is responsible for the management of a CAFO or an animal feeding operation subject to the provisions of this subchapter.

(28) Permanent odor sources--Those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include, but are not limited to, pens, confinement buildings, lagoons, retention facilities, manure stockpile areas, and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment, or land application areas.

(29) Permittee--Any person issued or covered by an individual permit or order, permit-by-rule, or granted authorization under the requirements of this subchapter.

(30) Pesticide--A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(31) Process wastewater--Any process generated wastewater directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat, or eggs).

(32) Process generated wastewater--Any water directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) which is produced as wastewater.

(33) Protection zone--The area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation, as shown on a United States Geological Survey (USGS) 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation, as shown on a USGS 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir; or

(C) within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point.

(34) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contamination fate and transport, and corrective action.

(35) Recharge feature--Those natural or artificial features either on or beneath the ground surface at the site under evaluation which, due to their existence, provide or create a significant pathway between the ground surface and the underlying groundwater within an aquifer. Examples include, but are not limited to: a permeable and porous soil material that directly overlies a weakly cemented or fractured limestone, sandstone, or similar type aquifer; fractured or karstified limestone or similar type formation that crops out on the surface, especially near a water course; or wells.

(36) Retention facility or retention structure--All collection ditches, conduits, and swales for the collection of runoff and wastewater, and all basins, ponds, pits, tanks, and lagoons used to store wastes, wastewaters, and manures.

(37) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10, Appendix A of Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(38) 25-year, 24-hour rainfall event/25-year event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(39) Waste--Manure (feces and urine), litter, bedding, or feedwaste from animal feeding operations.

(40) Wastewater--Water containing waste or contaminated by waste contact, including process-generated and contaminated rainfall runoff.

(41) Waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(42) Well--Any artificial excavation into and/or below the surface of the earth whether in use, unused, abandoned, capped, or plugged that may be further described as one or more of the following:

(A) excavation designed to explore for, produce, capture, recharge, or recover water, any mineral, compound, gas, or oil from beneath the land surface;

(B) excavation designed for the purpose of monitoring any of the physical or chemical properties of water, minerals, geology, or geothermal properties that exist or may exist below the land surface;

(C) excavation designed to inject or place any liquid, solid, gas, vapor, or any combination of liquid, solid, gas, or vapor into any soil or geologic formation below the land surface; or

(D) excavation designed to lower a water or liquid surface below the land surface either temporarily or permanently for any reason.

§321.33. Applicability.

(a) Any concentrated animal feeding operation (CAFO) operating under currently effective authorization granted under state law only by the Texas Natural Resource Conservation Commission (agency) or under federal law by EPA prior to the effective date of these amended rules as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5721) shall submit to the executive director written notice as required in §321.47 of this title (relating to Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization) or do one of the following.

(1) Within 60 days of the effective date of these amended (1999) rules, the facility owner or operator shall apply for authorization under this amended subchapter (1999) in accordance with the provisions of either §321.34 or §321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). If such application is filed within the 60-day period, and is administratively and technically complete, the applicant shall continue to operate the facility under the terms of the expired authorization until final disposition of the application in accordance with this subchapter.

(2) Any facility holding an authorization from the agency and which is not required under federal law to obtain National Pollutant Discharge Elimination System (NPDES) authorization shall continue to operate under the terms of its existing agency authorization until expiration, amendment, or termination. All such agency authorizations shall expire five years from the effective date of the amendments (1999) to these rules, unless such authorization specifies an earlier expiration date.

(3) Any facility holding an authorization from the agency under state law only and which under federal law is required to, but does not, hold a current NPDES authorization, shall file an application in accordance with provisions of this subchapter within 60 days of the effective date of these amended (1999) rules.

(b) The executive director may designate any animal feeding operation as a CAFO and require it to comply with any of the requirements of this subchapter, including those to apply for, receive, and comply with an individual permit under §321.34 of this title, in order to achieve the policy and purposes enumerated in the Texas Water Code (TWC), §5.120 and §26.003; the Texas Health and Safety Code, Chapters 341, 361, and 382; and §321.31 of this title (relating to Waste and Wastewater Discharge and Air Emission Limitations). Cases for which an individual permit may be required include, but are not limited to, situations where:

(1) the operation is located near surface and/or groundwater resources;

(2) compliance with standards in addition to those listed in this subchapter is necessary in order to protect waters in the state from pollution;

(3) the operation is not in compliance with the standards of this subchapter;

(4) the operation is under formal commission enforcement or has been referred to the commission for enforcement by the Texas State Soil and Water Conservation Board; or

(5) the owner and/or operator has submitted an application for registration or for a major amendment to a registration which does not comply with the requirements for administrative and technical completeness in §321.36(a)(1) of this title (relating to Notice of Application for Registration).

(c) New CAFOs are prohibited on the Edwards Aquifer recharge zone.

(d) Any facility, including all poultry operations as described in TWC, §26.302, which qualifies for, obtains, and is operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board is not a CAFO for purposes of this subchapter and is not covered by the provisions of this subchapter, unless referred to the commission in accordance with the Texas Agriculture Code, §201.026.

(e) Operators of animal feeding operations not required to submit an application for either a registration or an individual permit under this subchapter or authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit must locate, construct, and manage waste control facilities and land application areas to protect surface and groundwaters and prevent nuisance conditions and minimize odor conditions in accordance with the technical requirements of §§321.38 - 321.40 of this title (relating to Proper CAFO Operation and Maintenance; Pollution Prevention Plan; and Best Management Practices).

(f) Any existing, new, or expanding CAFO which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such general permit or authorized under subsection (a) or (b) of this section and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in the definition of CAFO in §321.32(9)(A) of this title (relating to Definitions) shall apply for registration in accordance with §321.35 of this title or individual permit in accordance with §321.34 of this title.

(g) Any existing, new, or expanding animal feeding operation which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of such general permit nor authorized under subsection (a) or (b) of this section, which is located in areas specified in the definition of Dairy Outreach Program areas in §321.32(11) of this title, and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the number of animals specified in the definition of CAFO in §321.32(9)(B) of this title, but less than or equal to the number of animals specified in the definition of CAFO in §321.32(9)(A) of this title shall apply for registration in accordance with §321.35 of this title or individual permit in accordance with §321.34 of this title.

(h) Any CAFO authorized under this subchapter must develop and implement a pollution prevention plan in accordance with the provisions of this subchapter.

(i) Any existing, new, or expanding CAFO, which is required to submit an application for registration or an application for an individual permit in accordance with this subchapter, may not commence operation of any waste management facilities or the construction of any facility that has the potential to emit air contaminants without first receiving authorization in accordance with this subchapter or in accordance with a commission order.

(j) Any CAFO which has existing authority under the Texas Clean Air Act (TCAA) does not have to meet the air quality criteria of this subchapter. Upon request, under the TCAA, §382.051, any CAFO which files an application, meets the requirements of §321.46 of this title (relating to Air Standard Permit Authorization), and obtains approval of such application in accordance with the provisions of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, and which do not satisfy all of the requirements of this subchapter, shall apply for and obtain an air quality permit under Chapter 116 of this title in addition to any authorization required under this subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this subchapter for the same site. Any application for a permit renewal, amendment, or transfer for any permit issued under the TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title.

(k) Any animal feeding operation authorized under this subchapter which is a new major source, or major modification as defined in Chapter 116 of this title shall obtain a permit under Chapter 116 of this title.

(l) By written request to the executive director, the owner or operator of any facility described in subsection (a)(2) of this section may request a transfer of its authorization from an individual permit

granted by the commission to a registration. Such transfer shall be processed in accordance with the provisions of §§321.35 - 321.37 of this title (relating to Procedures for Making Application for Registration; Notice of Application for Registration; and Actions on Applications for Registration). If approved, such transfer under this subsection shall include all special conditions or provisions from the existing individual permit, and in addition, shall not impose any additional conditions or other requirements unless there is substantial modification to the facility constituting a major amendment as defined by §305.62 of this title (relating to Amendment) or to address compliance problems with the facility or its operations in accordance with a commission order or amendment. If approved, transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.38 - 321.42 of this title (relating to Proper CAFO Operation and Maintenance; Pollution Prevention Plans; Best Management Practices; Other Requirements; and Monitoring and Reporting Requirements). If approved, such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation.

(m) No person may concurrently hold both an individual permit or approved registration under this subchapter and an authorization under a CAFO general permit in accordance with the notice of intent requirements of the general permit for the same site.

(n) Any new CAFO located within one mile of Coastal Natural Resource Areas as defined by §33.203(1) of the Texas Natural Resources Code shall apply for and obtain an individual permit in accordance with §321.34 of this title. Any owner/operator who is required to obtain an individual permit under this subsection may not commence physical construction and/or operation of any waste management facilities without first having submitted an application and received a final effective permit.

(o) By written request to the executive director, the owner or operator of any facility described in §321.33(a)(2) of this title (relating to Applicability) and holding an unexpired authorization granted under Subchapter K of this chapter (relating to Concentrated Animal Feeding Operations) may request a transfer of their authorization to a registration under this subchapter. Written request shall be on the same form as required under §321.47 of this title and continued authorization shall be in accordance with the terms of §321.47 of this title. A Subchapter K authorization that has been specifically set aside by court order shall not be eligible for transfer under this subsection.

(p) Any owner or operator holding a current authorization issued at any time under this subchapter shall obtain an amendment under §321.34 or §321.35 of this title prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination as specified in §321.46 of this title. Nonsubstantial modifications may be made to the site plan or the pollution prevention plan submitted with the approved application without prior authorization from the commission. Substantial modifications are those that result in an increase in the number of animals authorized to be confined, a change in the required buffer zone or required lagoon capacity, a change in boundaries of the site plan, or a violation of any management practice or physical or operational requirement of this subchapter.

(q) Section 321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs) and §321.49 of this title (relating to Dairy Waste Application Field Soil Sampling and Testing) apply to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32 of this title.

(r) Subject to the requirements of subsection (s) of this section, the following requirements apply to any CAFO with any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO located or proposed to be located within the protection zone of a sole-source surface drinking water supply, as defined in §321.32 of this title:

(1) for a proposed CAFO, the owner or operator shall obtain authorization to construct and operate the CAFO through the individual permit process prior to construction or operation; and

(2) for an existing registered or permitted CAFO:

(A) the owner or operator shall obtain an individual permit or an amended individual permit prior to making any changes which would require a major amendment;

(B) the owner or operator shall file an individual permit application for any renewal in accordance with the applicable requirements under §321.34 of this title; and

(C) if the CAFO is permitted, the permit authorization cannot be transferred to a registration.

(s) The commission shall process an application for authorization to construct or operate a CAFO as an individual permit under TWC, §26.028, relating to Action on Application, subject to the procedures provided by TWC, Chapter 5, Subchapter M, relating to Environmental Permitting Procedures, if, on the date the executive director determines that the application is administratively complete, any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, as defined in §321.32 of this title.

§321.34. Procedures for Making Application for an Individual Permit.

(a) A concentrated animal feeding operation (CAFO) that was not authorized under a rule, order, or permit issued or adopted by the commission and in effect at the time of the adoption of these amended rules as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5721) shall apply for an individual permit in accordance with the provisions of this section or shall apply for registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only individual permit, for a term of five years, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §§321.38 - 321.42 of this title (relating to Proper CAFO Operation and Maintenance; Pollution Prevention Plans; Best Management Practices; Other Requirements; and Monitoring and Reporting Requirements) and shall demonstrate compliance with the requirements specified in §321.35(c) of this title. Applicants shall comply with §§305.41, 305.43, 305.44, 305.46, and 305.47 of this title (relating to Applicability; Who Applies; Signatories to Applications; Designation of Material as Confidential; and Retention of Application Data). Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 and §305.504 of this title (relating to Fee Assessments and Fee Payments). An annual Clean Rivers Program fee is also required as required under §220.21(d) of this title (relating

to Water Quality Assessment Fees). Except as provided in subsections (b) - (e) of this section, each permittee shall comply with §§305.61 and 305.63 - 305.68 of this title (relating to Applicability; Renewal; Transfer of Permits; Permit Denial; Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Chapter 26 of the Texas Water Code. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) All applications for permit renewal must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and be in accordance with one of the following.

(1) An application to renew an individual permit for an animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be renewed by the commission at a regular meeting without holding a public hearing if the applicant does not seek to discharge into or adjacent to waters in the state and does not seek to change materially the pattern or place of land application.

(2) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an application for a renewal of an individual permit for a facility as described in §321.33(a)(2) of this title (relating to Applicability) may be granted by the executive director without public notice if it does not propose any change which constitutes a major amendment as defined in Chapter 305 of this title (relating to Consolidated Permits) or a major source as defined under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the permit in which the commission has determined that:

(A) a violation occurred that contributed to pollution of surface or groundwater, or an unauthorized discharge has occurred, or a violation of §101.4 of this title (relating to Nuisance) has occurred or any violation of an applicable state or federal air quality control requirement has occurred; and

(B) that such discharge or air emission violation was within the reasonable control of the permittee; and

(C) such discharge or air emission violation could have been reasonably foreseen by the permittee. In addition to the provisions of subparagraphs (A) - (C) of this paragraph, for any application for renewal of a permit within an area specified in the definition of Dairy Outreach Program areas in §321.32(11) of this title (relating to Definitions), an annual compliance inspection shall have been completed within 12 months of the date the executive director declares the application administratively complete.

(3) If the application for renewal does not meet all of the criteria in this subsection, then an application for renewal shall be filed in accordance with subsection (a) of this section.

(c) Each applicant shall pay an application fee as required by §305.53 of this title.

(d) A permittee submitting an application for renewal satisfying the criteria in subsection (b)(2) of this section will automatically be issued a notice of renewal for the existing permit by the executive director.

(e) Any permittee with an issued and effective individual permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for the application for renewal at least 240 days before the permit expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(f) Notice provided by the executive director under subsection (e) of this section shall be sent by certified mail, return receipt requested.

(g) A facility owner or operator shall submit a complete application within 90 days of notification from the executive director that an individual permit is required.

(h) If an application requests an amendment as defined by §321.33(p) of this title of an existing individual permit, the application shall be filed and processed under this section.

(i) If a renewal application has been filed before the individual permit expiration date, the existing individual permit will remain in full force and effect and will not expire until action on the application for renewal is final.

§321.35. Procedures for Making Application for Registration.

(a) A concentrated animal feeding operation (CAFO) that is not authorized under a rule, order, or permit of the commission in effect at the time of the adoption of these amended rules as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5721) shall apply for and receive registration under this section or shall apply for an individual permit in accordance with the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). A person who requests a registration or renewal of such registration granted under this subchapter, or an amendment as defined in §321.33(p) of this title (relating to Applicability), shall submit a complete and accurate application to the executive director, according to the provisions of this section.

(b) Applicants shall comply with the applicable provisions of §§305.43, 305.44, 305.46, and 305.47 of this title (relating to Who Applies; Signatories to Applications; Designation of Material as Confidential; and Retention of Application Data).

(c) Application for registration under this section shall be made on forms prescribed by the executive director. Except as provided in §321.33(r) of this title and §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), a facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate commission regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information:

(1) the verified legal status of the applicant;

(2) the payment of applicable fees;

(3) the signature of the applicant, in accordance with subsection (b) of this section;

(4) the maximum number of animals for which the facilities have been designed;

(5) a proposed site plan for the facility showing the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, the locations of all pens, lots, ponds, on-site and off-site land application areas, and any other types of control or retention facilities, and all adjacent landowners within 500 feet of the property line of all tracts containing facilities and all on-site or off-site land application areas, including their name and address. As used in this subchapter, the term "land application area" does not apply to any lands not owned, operated, or controlled by the CAFO operator for the purpose of off-site land application of manure, wherein the manure is given or sold to others for land application;

(6) a county general highway map (with graphic scale clearly shown) to identify the relative location of the CAFO and at least a one mile area surrounding the facility;

(7) one original (remainder in copies) United States Geological Survey 7 1/2-minute quadrangle topographic map or an equivalent high quality copy showing the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, and within 500 feet of the outer boundary of the land application area(s), open lots, and control facilities, the location of all private water wells (abandoned or in use) and public wells and all springs, lakes, or ponds within one mile of the outer boundary of the retention facility and downstream of the facility;

(8) sections of the pollution prevention plan to be designated by the executive director. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a licensed professional engineer must be submitted (if applicable);

(9) a copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner/operator of any lands to be utilized under the proposed CAFO. This requirement does not apply to any lands not owned, operated, or controlled by the applicant for the purpose of off-site land application of manure wherein the manure is given or sold to others for beneficial use, provided the owner/operator of the CAFO is not involved in the application of the manure;

(10) a certification by a Natural Resources Conservation Service (NRCS) engineer, licensed professional engineer, or qualified groundwater scientist documenting the absence or presence of any recharge features identified on any tracts of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO. Documentation, by the certifying party shall identify the sources and/or methods used to identify the presence or absence of recharge features. The documentation shall include the method or approach to be used to identify previously unidentified and/or undocumented recharge features that may be discovered during the time of construction. At a minimum, the records and/or maps of the following entities/agencies shall be reviewed to locate any artificial recharge features:

(A) Railroad Commission;

(B) Groundwater District, if applicable;

(C) Texas Water Development Board;

(D) TNRCC;

(E) NRCS;

(F) previous owner of site, if available, and

(G) on-site inspection of site with a NRCS engineer, licensed professional engineer, or qualified groundwater scientist;

(11) where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the proposed site plan shall also indicate the specific location of any and all recharge features found on any property owned, operated, or controlled by the applicant under the application as certified by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist. The applicant shall also submit a plan, developed by a NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation which may include the following:

(A) installation of the necessary and appropriate protective measures for each located recharge feature such as impervious cover, berms, or other equivalent protective measures covering all affected facilities and land application areas; or

(B) submission of a detailed groundwater monitoring plan covering all affected facilities and land application areas. At a minimum, the groundwater monitoring plan shall specify procedures to annually collect a groundwater sample from representative wells, have each sample analyzed for chlorides, nitrates, and total dissolved solids, and compare those values with background values for each well; or

(C) any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature;

(12) area land use map (air quality only). This map shall identify the property line, the permanent odor sources and the distance and direction to any residences, animal feeding operations, businesses, public parks, or occupied structures within a one-mile radius of the permanent odor sources to show compliance with §321.46 of this title (relating to Air Standard Permit Authorization). The map shall include the north arrow and scale of map;

(13) the applicant shall indicate in the application the location and times where the application may be inspected by the public. Within 48 hours of receiving notice of administrative and technical completeness, the applicant shall make a copy of the application and the entire pollution prevention plan available for public inspection at the applicant's place of business during normal business hours, Monday through Friday, and at a public place within the county where the proposed facility is to be located so that the copy may be made available for inspection at a public place during normal business hours. For the purposes of this section, normal business hours shall be at a minimum of: 9:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday allowing for the observance of state and/or federal holidays. Such places may include, but are not limited to, public libraries; district, county, or municipal offices; community recreation centers; or public schools;

(14) for an application for a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, documentation showing whether or not the facility is located in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions), if the application is for authorization to:

(A) construct or operate a new dairy CAFO, as defined in §321.32 of this title; or

(B) increase the number of dairy animals confined under an existing operation; and

(15) for applications for CAFOs located in the watershed of a sole-source surface drinking water supply, as defined in §321.32 of this title, documentation showing whether or not any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located or proposed to be located within the protection zone

of a sole-source surface drinking water supply, as defined in §321.32 of this title.

(d) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each registrant as required by §305.503 and §305.504 of this title (relating to Fee Assessment and Fee Payment). An annual Clean Rivers Program fee is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). No fees under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be required of an applicant for an authorization issued under this section.

(e) Each registrant shall comply with and is subject to the provisions of §§305.61, 305.64 and 305.66 - 305.68 of this title (relating to Applicability; Transfer of Permits; Permit Denial, Suspension, and Revocation; Revocation and Suspension Upon Request or Consent; Action and Notice on Petition for Revocation or Suspension).

(f) Registrations approved under this subchapter shall be effective for a term not to exceed five years.

(g) (Air quality only). To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title.

(h) Registrations issued under §321.37 or §321.47 of this title (relating to Action on Applications for Registration or Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization) shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. However, if the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption. An application for renewal of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and, except as otherwise provided in paragraphs (1) - (5) of this subsection, be processed according to §321.36 and §321.37 of this title (relating to Notice of Application for Registration and Action on Application for Registration). A registration for a facility described in §321.33(a)(2) of this title may be renewed, according to the following procedures.

(1) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an administratively and technically complete application may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A) a violation occurred that contributed to pollution of surface or ground water, or an unauthorized discharge has occurred, or a violation of §101.4 of this title (relating to Nuisance) has occurred, or any violation of an applicable state or federal air quality control requirement has occurred; and

(B) that such discharge or air emission violation was within the reasonable control of the registrant; and

(C) such discharge or air emission violation could have been reasonably foreseen by the registrant. In addition to the provisions of subparagraphs (A) - (C) of this paragraph, for any application for renewal of a registration within an area specified in the definition of Dairy Outreach Program areas in §321.32(11) of this title, an annual compliance inspection shall have been completed within 12 months of the date the executive director declares the application administratively complete.

(2) Each applicant shall pay an application fee as required by §305.53 of this title.

(3) A registrant submitting an application for renewal of a registration satisfying the criteria in paragraph (1) of this subsection will automatically be issued a renewal for the existing registration by the executive director.

(4) If the application for renewal of a registration cannot meet all of the criteria in paragraph (1) of this subsection, then an application for renewal of the registration shall be filed in accordance with subsection (a) of this section and processed in accordance with §321.36 and §321.37 of this title.

(5) Any registrant with an effective registration shall submit an application for renewal at least 180 days before the expiration date of the effective registration, unless permission for a later date has been granted by the executive director. The executive director shall provide the registrant notice of deadline for the application for renewal by certified mail, return receipt requested, at least 240 days before the registration expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing registration.

§321.39. Pollution Prevention Plans.

(a) A pollution prevention plan shall be developed for each concentrated animal feeding operation (CAFO) covered under this subchapter. Pollution prevention plans shall be prepared in accordance with good engineering practices and shall include measures necessary to limit the discharge of pollutants to waters in the state. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this subchapter. The plan shall identify a specific individual(s) at the facility who is responsible for development, implementation, maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel shall address all aspects of the facility's pollution prevention plan.

(b) Where a Natural Resources Conservation Service (NRCS) plan has been prepared for the facility, the pollution prevention plan may refer to the NRCS plan when the NRCS plan documentation contains equivalent requirements for the facility. When the operator uses a NRCS plan as partial completion of the pollution plan, the NRCS plan must be kept on site. Design and construction criteria developed by the NRCS can be substituted for the documentation of design capacity and construction requirements (see subsection (f) of this section) of the pollution prevention plan provided the required inspection logs and water level logs in subsection (f)(3) and (11) of this section are kept with the NRCS Plan. Waste management plans developed by the NRCS can be substituted for the documentation of application rate calculations in subsection (f)(19) and (24) of this section. NRCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the NRCS to contain adequate management practices. To insure the protection of water quality, the NRCS has determined that NRCS plans prepared prior to 1989 must be submitted for renewal with the Natural Resources Conservation Service or a waste management professional before December 1995. NRCS has determined that all plans should be reviewed every five years to insure proper management of wastes.

(c) The plan shall be signed by the operator or other signatory authority in accordance with §305.44 of this title (relating to Signatories to Applications), and be retained on site. The plan shall be updated as appropriate.

(d) Upon completion of a plan review, the executive director may notify the operator at any time that the plan does not meet one or more of the minimum requirements of this subchapter. After such notification from the executive director, the operator shall make changes to the plan within 90 days after such notification unless otherwise provided by the executive director.

(e) The operator shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters in the state or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from CAFOs.

(f) The plan shall include, at a minimum, the following items.

(1) Each plan shall provide a description of potential pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to waters in the state from the facility. An evaluation of potential pollutant sources shall identify the types of pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources. The type of pollutant sources found at any particular site varies depending upon a number of factors, including, but not limited to: site location, historical land use, proposed facility type, and land application practices. The evaluation shall encompass all land that will be used as part of the CAFO as indicated in the site plan. Each potential pollutant source must be identified in the plan. A thorough site inspection of the facility is recommended to ensure that all sources have been identified. Potential pollutant sources found at CAFO facilities include, but are not limited to, the following: manure; sludge; wastewater; dust; silage stockpiles; fuel storage tanks; pesticide storage and applications; lubricants; disposal of any dead animals associated with production at the CAFO; land application of waste and wastewater; manure stockpiling; pond clean-out; vehicle traffic; and pen clean-out. Each plan shall include:

(A) a site plan/map, or topographic map indicating, an outline of the property that will be used in the waste generation and utilization activities of the CAFO area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies;

(B) identification of the specific location of any recharge features identified on any tracts of land planned to be utilized under the provisions of this subchapter. In addition, the plan should also locate and describe the function of all measures installed to prevent impacts to identified recharge features;

(C) a list of any significant spills of these materials at the facility after September 18, 1998, or for new facilities, since date of operation; and

(D) all existing sampling data.

(2) The pollution prevention plan for each facility shall include a description of management controls appropriate for the facility, and the operator must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility.

(3) The plan shall include the location and a description of structural controls. Structural controls shall be inspected, by those individuals identified in the pollution prevention plan as responsible for development, implementation, maintenance, and revision of the plan, at least four times per year for structural integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections. The appropriateness of any controls shall reflect the identified sources of pollutants at the facility.

(4) The plan must include documentation of the assumptions and calculations used in determining the appropriate volume capacity of the retention facilities. In addition to the 25-year, 24-hour rainfall, the volume capacity of the retention facility shall be designed to meet the demands of a hydrologic needs analysis (water balance) which demonstrates the irrigation water requirements for the cropping system maintained on the wastewater application site(s). Precipitation inputs to the hydrologic needs analysis (water balance) shall be the average monthly precipitation taken from an official source such as the "Climatic Atlas of Texas," LP-192, published by the Texas Department of Water Resources, dated December, 1983, or the most recent edition, or successor publication. The consumptive use requirements of the cropping system shall be developed on a monthly basis, and shall be calculated as a part of the hydrologic needs analysis (water balance). The following volumes shall be considered in determining the analysis:

(A) the runoff volume from all open lot surfaces;

(B) the runoff volume from all areas between open lot surfaces that is directed into the retention facilities;

(C) the rainfall multiplied by the area of the retention and waste basin;

(D) the volume of rainfall from any roofed area that is directed into the retention facilities;

(E) all waste and process generated wastewater produced during a 21-day, or greater, period;

(F) the estimated storage volume for a minimum one year of sludge accumulation;

(G) the storage volume required to contain all wastewater and runoff during periods of low crop demand;

(H) the evaporation volume from retention facility surfaces;

(I) the volume applied to crops in response to crop demand;

(J) the minimum treatment volume required for waste treatment, if treatment lagoon; and/or

(K) any additional storage volume required as a safety measure as determined by the system designer.

(5) The maximum required storage value calculated by the hydrologic analysis requirements shall not encroach on the storage volume required for the 25-year, 24-hour rainfall event. Wastewater application rates utilized in the hydrologic needs analysis (water balance) shall not induce runoff or create tailwater.

(6) In addition, the retention facility shall include a top freeboard of not less than two feet. Freeboard shall account for settlement and slope stability of the materials used at the time of design and construction.

(7) (Air quality only). A lagoon in a single lagoon system and a primary lagoon in a multi-stage lagoon system shall be designed to maintain the necessary treatment volume or surface area as calculated using the manure production data (mean plus one standard deviation) published by American Society of Agricultural Engineers (ASAE) standards D384.1, dated June, 1988, and applicable updates to comply with anaerobic lagoon design criteria as established by ASAE standards EP-403.2, dated December, 1992, and applicable updates, or other site-specific data documented in the pollution prevention plan.

(8) Evaporation systems shall be designed to withstand a ten-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), as determined by a hydrologic needs analysis

(water balance), and sufficient freeboard (not less than one foot) shall be maintained to dispose of rainfall and rainfall runoff from the 25-year, 24-hour rainfall event without overflow. In the hydrologic needs analysis determination, in any month in which a catastrophic event occurs, the analysis shall replace such an event with not less than the long-term average rainfall for that month.

(9) Site-specific information should be used to determine retention capacity and land application rates. All site-specific information used must be documented in the pollution prevention plan.

(10) The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility.

(A) Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees.

(B) The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content.

(C) Embankment construction must be accompanied by compaction testing and certified to be in accordance with NRCS, Corps of Engineers, Bureau of Reclamation, or American Society of Civil Engineers (ASCE) design standards. Compaction tests must be certified by a licensed professional engineer.

(D) All embankment walls shall be stabilized to prevent erosion or deterioration.

(11) The plan must include a schedule for liquid waste removal. A date log indicating weekly inspection of wastewater level in the retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, tanks, or lagoons for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient available capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The operator shall restore such capacity to store all runoff from a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such capacity, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the capacity required to accommodate the rainfall and runoff resulting from the 25-year, 24-hour rainfall event.

(12) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the following: the volume required for a 25-year, 24-hour rainfall event; and the predetermined minimum treatment volume within any treatment pond. The marker shall be visible from the top of the levee. At no time shall a treatment lagoon at a CAFO that is operated under an air quality authorization be dewatered to a level below the predetermined treatment volume, except for cleanout periods or periods where the net effect of evaporation and rainfall would require the addition of fresh water to maintain the treatment volume without pumping fresh groundwater from an aquifer.

(13) (Air quality only). The primary lagoon in a multistage lagoon system shall be designed and operated so that the lagoon maintains a constant level at all times unless prohibited by climatic conditions. Where practical, any contaminated runoff should be routed around the primary lagoon into the secondary lagoon.

(14) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the pollution prevention plan.

(15) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site-specific variations are warranted, the operator must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage or leakage will be considered to be properly constructed. Structures built in accordance with site-specific NRCS plans and specifications will be considered to be in compliance with the design and capacity requirements of this subchapter if the site-specific conditions are the same as those used by the NRCS to develop the plan (numbers of animals, runoff area, wastes generated, etc.). All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the NRCS. The operator must use those standards that are current at the time of construction.

(16) The operator shall include in the plan, site-specific documentation that no significant hydrologic connection exists between the contained wastewater and waters in the state. Where the operator cannot document that no significant hydrologic connection exists, the ponds, lagoons, and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters and groundwaters.

(A) The operator can document lack of hydrologic connection by either: documenting that there will be no significant leakage from the retention structure; or documenting that any leakage from the retention structure would not migrate to waters in the state. This documentation shall be certified by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

(B) For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness as described in this section. Documentation that leakage will not migrate to waters in the state must include maps showing groundwater flow paths, or that the leakage enters a confined environment. A written determination by a NRCS engineer, or a licensed professional engineer that a liner is not needed to prevent a significant hydrologic connection between the contained wastewater and waters in the state will be considered documentation that no significant hydrologic connection exists.

(17) Site-specific conditions shall be considered in the design and construction of liners. NRCS liner requirements or liners constructed and maintained in accordance with NRCS design specifications in Appendix 10d of the Agricultural Waste Management Handbook (or its current equivalent) shall be considered to prevent hydrologic connections which could result in the contamination of waters in the state. Liners for retention structures shall be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by a NRCS engineer, licensed professional engineer, or qualified groundwater scientist, the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.

(18) Where a liner is installed to prevent hydrologic connection the operator must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other

protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner shall be evaluated by a NRCS engineer or a licensed professional engineer within 30 days of the damage. Documentation of liner maintenance shall be kept with the pollution prevention plan. The operator shall have a NRCS engineer, licensed professional engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the executive director that significant potential exists for the contamination of waters in the state or drinking water, the operator shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the pollution prevention plan, as well as all sampling data. In the event monitoring well(s) are required, the operator must sample each monitor well annually for nitrate as nitrogen, chloride, and total dissolved solids using the methods outlined in the pollution prevention plan, and compare the analytical results to the baseline data. If a 10% deviation in concentration of any of the sampled constituents is found, the operator must notify the executive director within 30 days of receiving the analytical results. Data from any monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility unless otherwise provided by the executive director.

(19) The pollution prevention plan shall describe measures that will be used to minimize entry of non-process wastewater into retention facilities. Such measures may include the construction of berms, embankments, or similar structures. Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized, the following requirements shall apply.

(A) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge of pollutants into or adjacent to waters in the state.

(B) When wastewater is used to irrigate land application areas, the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Application rates shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters shall be based on the available nitrogen content, however, where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 parts per million (ppm) of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field, the operator may apply wastewater to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection.

(C) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless in accordance with subparagraph (E) of this paragraph.

(D) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, pollution of waters in the state, and prevent the occurrence of nuisance conditions.

(E) It shall be considered proper operation and maintenance for a facility which has been properly operated in accordance with this subchapter, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters in the state. Only that portion of the total retention facility wastewater volume necessary to prevent overflow due to chronic or catastrophic rainfall shall be land applied for filtering prior to discharging to waters in the state. Monitoring and reporting requirements for such discharges shall be consistent with §321.42 of this title (relating to Monitoring and Reporting Requirements).

(F) Facilities including ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this subchapter and the pollution prevention plan.

(G) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this subchapter.

(H) Where land application sites are isolated from surface waters and groundwaters and no potential exists for runoff to reach any waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval of the executive director. No land application under this subsection shall cause or contribute to a violation of water quality standards or create a nuisance.

(I) The pollution prevention plan shall include the following information:

(i) a site map showing the location of any land application areas, either on-site or off-site which are owned, operated, or under the control of the facility owner or operator which will be utilized for land application of waste or wastewater;

(ii) the location and description of the major soil types within the identified land application areas;

(iii) crop types and rotations to be implemented on an annual basis;

(iv) predicted yield goals based on the major soil types within the identified land application areas;

(v) procedures for calculating nutrient budgets to be used to determine application rates;

(vi) a detailed description of the type of equipment and method of application to be used in applying the waste or wastewater; and

(vii) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that will be applied to the land application areas.

(J) The owner or operator shall maintain on-site and update records of all waste and wastewater either utilized at the facility or removed from the facility.

(i) For facilities where waste or wastewater is applied on property owned, operated, or controlled by the owner or operator, such records shall include the following information: date of waste or wastewater application; location of the specific application site and the number of acres utilized during each application event; acreage of each individual crop on which waste or wastewater is applied; number of dry tons, percent nitrogen based on a dry basis, and the percent moisture content of the manure; and actual annual yield of each harvested crop.

(ii) Where waste or wastewater is removed from the facility, records must be maintained in accordance with paragraph (23) of this subsection.

(20) Solids shall be removed in accordance with a predetermined schedule for cleanout of all treatment lagoons to prevent the accumulation of solids from exceeding 50% of the original treatment volume. Removal of solids shall be conducted during favorable wind conditions that carry odors away from nearby receptors and the operator shall notify the regional office of the commission as soon as the lagoon cleaning is scheduled, but not less than ten days prior to cleaning, and verification shall be reported to the same regional office within five days after the cleaning has been completed. At no time shall emissions from any activity create a nuisance. Any increase in odors associated with a properly managed cleanout under this subsection will be taken into consideration by the executive director when determining compliance with the provisions of this subchapter.

(21) (Manure and pond solids handling and land application). Storage and land application of manure shall not cause a discharge of pollutants to waters in the state, cause a water quality violation in waters in the state, or cause a nuisance condition. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters, and contaminated storm water (rainwater runoff) from the concentrated animal feeding areas.

(22) Where the operator decides to land apply manures or pond solids, the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data. Land application rates of wastes shall be based on the available nitrogen content of the solid waste, except however, where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field, the operator may apply manure or pond solids to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection.

(23) If manure is sold or given to other persons for off-site land application or disposal, the operator must maintain a log of: date of removal from the CAFO; name of hauler; and amount, in wet tons, dry tons, or cubic yards, of waste removed from the CAFO. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the operator must make available to the hauler any nutrient sample analysis of the manure from that year.

(24) The procedures documented in the pollution prevention plan must ensure that the handling and land application of wastes as defined in §321.32 of this title (relating to Definitions) comply with the following requirements.

(A) Manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain, near water courses or recharge feature is prohibited unless protected by berms or other structures. The land application of wastes at agronomic rates shall not be considered surface disposal in this case and is not prohibited.

(B) When manure is stockpiled, it shall be stored in a well drained area with no ponding of water, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage. Runoff from manure storage piles must be retained on site.

(C) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.

(D) Manure shall be uniformly applied to suitable land at appropriate times and at agronomic rates. Discharge (runoff) of waste from the application site is prohibited. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions.

(E) All necessary practices to minimize waste manure transport to waters in the state shall be utilized and documented to the plan.

(F) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.

(G) Where land application sites are isolated from surface waters and no potential exists for runoff to reach waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval by the executive director. No land application under this subchapter shall cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create an nuisance condition.

(H) Nighttime application of liquid or solid waste shall be allowed only in areas with no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving waste application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving waste application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have, in writing, agreed to such nighttime applications.

(I) Accumulations of solids on concrete cow lanes at dairies and concrete swine pens, without slotted floors, shall be scraped or flushed at least once per week or in accordance with proper design and maintenance of the facility. Farrowing pens at swine facilities which are not scraped or flushed once per week shall be scraped/flushed after each group of sows have been removed from the facility.

(J) Buildings designed with mechanical flush/scrape systems shall be flushed/scraped at least once per week or as often as necessary to maintain the design efficiency. This provision would include, but would not be limited to, swine and caged poultry operations.

(K) Earthen pens shall be designed and maintained to ensure good drainage and to prevent ponding.

(L) Facilities that utilize a solid settling basin(s) shall remove solids from the basin as often as necessary to maintain the design efficiency.

(25) The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with a schedule and plan of operation to ensure compliance with this subchapter. The operator shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (mechanical separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharge of pollutants to waters in the state or the creation of a nuisance condition.

(26) The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters in the state the pollution prevention plan shall identify measures used to limit erosion and pollutant runoff.

(27) The operator shall document to the pollution prevention plan as soon as possible, any planned physical alterations or additions to the permitted facility. The operator must insure that any change or facility expansion will not result in a discharge in violation of the

provisions of this subchapter or will require an amendment to an existing authorization in force at the time of modification.

(28) Prior to commencing wastewater irrigation or waste application on land owned or operated by the operator, and annually thereafter, the operator shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures.

(A) Sampling procedures shall employ accepted techniques of soil science for obtaining representative and analytical results.

(B) Samples should be taken within the same 45-day time frame each year.

(C) Obtain one composite sample for each soil depth zone per land management unit and per uniform (soils with the same characteristics and texture) soil type within the land management unit. For the purposes of this subchapter, a land management unit shall be considered to be an area associated with a single center pivot system or a tract of land on which similar soil characteristics exist and similar management practices are being used.

(D) Composite samples shall be comprised of 10 - 15 randomly sampled cores obtained from each of the following soil depth zones:

(i) Zone 1: 0 - 6 inches for land application areas where the waste is incorporated directly into the soil or 0 - 2 inches for land application areas where the waste is not incorporated into the soil; if a 0 - 2 inch sample is required under this subsection, then an additional sample from the 2 - 6 inch soil depth zone shall be obtained in accordance with the provisions of this section, and

(ii) Zone 2: 6 - 24 inches.

(E) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use, and yield goal. Soil test reports shall include nutrient recommendations for the crop yield goal.

(F) Chemical/nutrient parameters and analytical procedures for laboratory analysis of soil samples from wastewater and waste application sites shall include the following:

(i) nitrate reported as nitrogen in ppm;

(ii) phosphorus (extractable, ppm) - Texas Agricultural Extension Service Soil Testing Laboratory - TAMU extractant or Mehlich III;

(iii) potassium (extractable, ppm);

(iv) sodium (extractable, ppm);

(v) magnesium (extractable, ppm);

(vi) calcium (extractable, ppm);

(vii) soluble salts/electrical conductivity (dS/m) - determined from extract of 2:1 (v/v) water/soil mixture; and

(viii) soil water pH.

(G) Except as provided under §321.49 of this title (relating to Dairy Waste Application Field Soil Sampling and Testing), when results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicate a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any waste or wastewater to the affected area unless the waste or wastewater application is implemented in accordance with a detailed nutrient utilization plan developed by an employee of the NRCS, a nutrient management specialist certified by the NRCS, the Texas State Soil and Water Conservation Board, Texas Cooperative Extension, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the American Society of Agronomy (ASA), after approval by the executive director based on a determination by the executive director that another person or entity identified in this subparagraph cannot develop the plan in a timely manner. The executive director will issue technical guidance to assist in the development of complete and effective nutrient utilization plans. No land application under an approved nutrient utilization plan shall cause or contribute to a violation of water quality standards or create a nuisance. Land application under the terms of the nutrient utilization plan may commence 30 days after the plan is filed with the executive director, unless prior to that time the executive director has returned the plan for failure to comply with all the requirements of this subsection. The CAFO operator shall ensure that the nutrient utilization plan, at a minimum, evaluates and addresses the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality:

(i) slope of application fields (as a percentage) and distance of the land application area from waters in the state;

(ii) average rainfall for the area for each month;

(iii) soil series, soil type, soil family classification, and pH values of all soils in application fields;

(iv) chemical characteristics of the waste, including total nitrogen and phosphorus;

(v) recommended rates, methods, and schedules of application of manure and wastewater for all fields;

(vi) crop types, maximum crop uptake rate, and expected yield for each crop; and

(vii) best management practices to be utilized to prevent phosphorus impacts to water quality, including any physical structures and vegetative filterstrips.

(29) The operator shall annually analyze at least one representative sample of irrigation wastewater and one representative sample of solid waste for total nitrogen, total phosphorus, and total potassium.

(30) Results of initial and annual soils, wastewater and solid waste analyses shall be maintained on-site as part of the pollution prevention plan.

(31) Operators submitting applications for renewal or expansion of existing facilities authorized under this subchapter to utilize a playa lake as a wastewater retention structure shall within ninety (90) days of the effective date of the renewal, submit a groundwater monitoring plan to the Agriculture Section, Water Quality Division of the Texas Natural Resource Conservation Commission. At a minimum, the groundwater monitoring plan shall specify procedures to annually collect a groundwater sample from each well providing water for the facility, have each sample analyzed for chlorides and nitrates, and compare those values to background values for each well.

§321.48. Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs).

(a) This section applies to new CAFOs and to CAFOs increasing the number of animals confined under an existing operation that are:

(1) feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls; and

(2) in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions).

(b) The owner or operator shall submit a permit application and obtain a new or amended individual permit prior to:

(1) constructing or operating a new CAFO, as defined in §321.32 of this title; or

(2) increasing the number of animals confined under an existing operation.

(c) Nothing in this section limits the commission's authority to include in an individual or general permit under this subchapter provisions necessary to protect a water resource in this state.

(d) Any permit to which this section applies must, at a minimum:

(1) provide for management and disposal of waste in accordance with this subchapter; and

(2) require that 100% of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) beneficially used outside of the watershed;

(B) disposed in landfills outside of the watershed, subject to the requirements of commission rules relating to industrial solid waste;

(C) delivered to a composting facility approved by the executive director;

(D) put to another beneficial use approved by the executive director; or

(E) applied in any of the following ways:

(i) in accordance with the requirements of §321.39 of this title (relating to Pollution Prevention Plans) and §321.40 of this title (relating to Best Management Practices) to a waste application field owned or controlled by the owner of the CAFO, if the field is not a historical waste application field, as defined in §321.32 of this title;

(ii) in accordance with the requirements of §321.39 and §321.40 of this title, to a historical waste application field that is owned or operated by the owner or operator of the CAFO, if results of representative composite soil sampling conducted at the waste application field and submitted to the executive director show that the waste application field contains 200 or fewer parts per million (ppm) of extractable phosphorus (reported as P) in the Zone 1 (0 - 6 inch) depth; or

(iii) in accordance with a detailed nutrient utilization plan approved by the executive director which, at a minimum, meets the requirements of §321.39(f)(28)(G) of this title, to a historical waste application field that is owned or operated by the owner or operator of the CAFO, if results of representative composite soil sampling conducted at the waste application field and submitted to the executive director show that the waste application field contains greater than 200 ppm of extractable phosphorus (reported as P) in the Zone 1 (0 - 6 inch) depth.

(e) The detailed nutrient utilization plan required under subsection (d)(2)(D)(iii) of this section must be developed by:

(1) an employee of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS);

(2) a nutrient management specialist certified by the United States Department of Agriculture's NRCS;

(3) the State Soil and Water Conservation Board;

(4) the Texas Cooperative Extension;

(5) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(6) a professional agronomist or soil scientist certified by the American Society of Agronomy, after approval by the executive director based on a determination by the executive director that another person or entity listed in paragraphs (1) - (5) of this subsection cannot develop the plan in a timely manner.

§321.49. Dairy Waste Application Field Soil Sampling and Testing.

(a) This section applies to CAFOs that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions).

(b) For new CAFOs or CAFOs increasing the number of animals, the requirements of this section must be implemented concurrently with the next required annual soil sampling date established in the pollution prevention plan.

(c) For existing CAFOs not increasing the number of animals, the requirements of this section must be implemented concurrently with the next required annual soil sampling date established in the pollution prevention plan, beginning six months after the effective date of these amended and new rules (2002).

(d) The CAFO operator shall:

(1) contract with a person described in §321.48(e) of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)) and approved by the executive director to collect one or more representative composite soil samples from each waste application field, including each historical waste application field, and to ensure compliance with subsection (f) of this section; and

(2) have sampling under subsection (d)(1) of this section performed in accordance with the requirements of §321.39 of this title (relating to Pollution Prevention Plans) and not less often than once every 12 months, in accordance with the procedures in §321.39(f)(28)(A) - (D) of this title.

(e) The CAFO operator shall ensure that each sample collected under subsection (d) of this section is tested in accordance with the applicable requirements of §321.39(f)(28)(A) - (F) of this title and is tested for any other nutrient designated by the executive director.

(f) The CAFO operator shall ensure that the analytical results from the testing performed under subsection (e) of this section are submitted to the executive director and that a copy is submitted to the appropriate commission regional office and the operator of the CAFO within 60 days of the sampling.

(g) If the samples tested under subsection (e) of this section show a phosphorus level in the soil of more than 500 parts per million (ppm) in Zone 1 (0 - 6 inch) depth, the operator shall file with the executive director a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e) of this title.

(h) If the samples tested under subsection (e) of this section show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm in Zone 1 (0 - 6 inch) depth, the operator shall:

(1) file with the executive director a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e) of this title; or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person described under §321.48(e) of this title.

(i) If the owner or operator of a waste application field is required by this section to have a nutrient utilization plan with a phosphorus reduction component, and if the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration in Zone 1 (0 - 6 inch) depth, then the owner or operator is subject to enforcement action at the discretion of the executive director. The executive director, in determining whether to take an enforcement action, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including, but not limited to, an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

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 February 14, 2002.

TRD-200200940
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: March 6, 2002
Proposal publication date: September 28, 2001
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421 STANDARDS FOR CERTIFICATION

37 TAC §421.5, §421.17

The Texas Commission on Fire Protection (TCFP) adopts amendments to §421.5 and new §421.17 without changes to the text published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10803).

The result of enforcing the amended and new sections will be that applicants for certification will have clearer guidelines for certification requirements.

Amendments to §421.5 add definitions for immediately dangerous to life or health (IDLH), incipient stage fire, interior structure fire fighting, personal alert safety system (PASS), and structural fire protection personnel. New §421.17, Requirement to Maintain Certification, provides additional clarification for certification issues discussed in Chapter 437, Fees, and Chapter 441, Continuing Education.

No comments were received on the proposed amendments or new section.

The amendments and new section are adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties, Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum requirements for fire protection personnel, and for the purpose of implementing Senate Bill 382 enacted by the 77th Legislature.

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 February 13, 2002.

TRD-200200897
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 5, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 239-4921

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CHAPTER 423. FIRE SUPPRESSION SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.13

The Texas Commission on Fire Protection (TCFP) adopts amendments to §423.13, International Fire Service Accreditation Congress (IFSAC) Certification, without changes to the text published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10805).

The amendments increase the opportunities for individuals who are employed outside of the fire service to earn IFSAC certifications through studies which can enhance their job performance.

The amendments add IFSAC certifications for First Responder Awareness and First Responder Operations.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum requirements for fire protection personnel.

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

Filed with the Office of the Secretary of State on February 13, 2002.

TRD-200200898

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 5, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER P. PHARMACY SERVICES

40 TAC §19.1510

The Texas Department of Human Services (DHS) adopts an amendment to §19.1510 with a change to the proposed text in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10810).

Justification for the amendment is to implement Senate Bill 768, 77th Legislature, which allows nursing facilities to keep emergency medication kits that contain small doses of commonly prescribed drugs, such as antibiotics, narcotics, anti-anxiolitics, and anti-convulsants, for residents who may need them with little notice to obtain them from a pharmacy. Senate Bill 768 transfers responsibility for emergency medication kit rules from DHS to the Texas State Board of Pharmacy (TSBP). DHS amends its current rules to reflect TSBP's new rules.

The department received no comments regarding adoption of the amendment. A minor editorial change in §19.1510(1) added parentheses to a citation.

The amendment is adopted under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.1510. Emergency Medication Kits.

Stocks of inventoried emergency medications may be kept in facilities.

(1) Emergency medication kits must be maintained in compliance with 22 TAC §291.20(b) (relating to Remote Pharmacy Services Using Emergency Medication Kits).

(2) Facilities must have contracts with the pharmacy that provides the emergency medication kit. The contract must outline the services to be provided by the pharmacy and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations.

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 February 14, 2002.

TRD-200200937
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: December 28, 2001
For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER J. 1915(C) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6003

The Texas Department of Human Services (DHS) adopts an amendment to §48.6003, in its Community Care for Aged and Disabled chapter. The amendment is adopted with changes to the proposed text published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6285).

Justification for the amendment is to make CBA eligibility determination more equitable. This rule change also will provide a balance between nursing facility residents and individuals living in a community when determining CBA eligibility.

To better implement Rider 37, and in response to public comments, DHS has removed provisions requiring individuals to request CBA services and meet all CBA eligibility criteria while residing in a nursing facility as a condition to bypass the interest list, as similar provisions are included in the rules implementing Rider 37. DHS has accordingly deleted subsection (b)(2) of this title (referring to promoting independence). DHS has also renumbered subsection (b)(3) of this title (referring to suspended enrollment) as (b)(2), and removed the sentence, "During periods of suspended enrollment, those individuals who meet the criteria specified in paragraph (2) of this subsection are placed at the top of the interest list on a first-come, first-served basis."

The department received written comments from the Texas Association of Home Care; United Cerebral Palsy of Texas; the Disability Policy Consortium; and Advocacy, Incorporated. A summary of the comments and the department's responses follows.

Comment: We believe that if a person has had to enter a nursing facility (NF) in the past six months, that person is at high risk of institutionalization in the future. We recommend leaving §48.6003 (b)(1)(C) language as it is in the current rule and deleting the following sentence from §48.6003 (b)(2): "If the individual moves from a nursing facility (NF) to a community setting before CBA enrollment, the individual is denied CBA services and his name is added to the CBA interest list with the date he requested CBA services."

Response: DHS disagrees. At this time, there are approximately 40,000 individuals registered on the CBA interest list. Currently

an individual can go into an NF and bypass these 40,000 individuals. This amendment will provide a balance between NF residents and individuals living in a community who may also be at a high risk for institutionalization when determining CBA eligibility. If the Medicaid-enrolled NF resident continues to reside in the NF until he is determined eligible for CBA services, he can receive the CBA services in the community, and due to Rider 37, the funds for care will follow the client.

Comment: We believe that the concept of resources/slots is not relevant. We also believe that everyone in an NF who chooses to get out should get a CBA position, not just go to the top of the interest list, particularly because the state is already spending money on the person in the NF. With the implementation of Rider 37, the need for any change in the CBA eligibility rule is unnecessary, as an individual residing in an NF will be able to utilize Rider 37 and move into the community. This could be added in §48.6003(b)(2).

Response: DHS agrees that every NF resident whose stay is being paid by Medicaid has the option to leave the NF and receive CBA services if the individual meets the CBA eligibility criteria. Since DHS implemented Rider 37 in September 2001, there is no need for the proposed substitute language included under (b)(2) of this section (pertaining to Medicaid eligible nursing facility residents being able to be approved for CBA services). We are deleting the proposed language. Proposed rules to implement Rider 37 were presented at the September 2001 Board meeting, with no negative comments. Since September 2001, DHS has implemented Rider 37 through a policy interpretation. As NF Medicaid enrolled residents have transferred directly into the CBA program, their CBA services are being funded from the NF budget. If the individual leaves the NF prior to eligibility determination and receipt of Medicaid funds, the money does not follow the client. The individual will be registered on the CBA interest list in the date order he requested services.

Comment: Please clarify that enrollment into CBA is limited to the number of participants approved by CMS or the availability of state funding, with the exception of individuals who use Rider 37 to transfer from a nursing facility to CBA community services. We recommend the proposed rule language reference Rider 37, which gives the department the ability to transfer funds from the nursing facility line item to the community care budget. As noted above, this could be added in §48.6003(b)(2).

Response: DHS disagrees, and feels there is no need to clarify that enrollment into CBA is limited to the number of participants approved by CMS or the availability of state funding in the proposed rule. This is already clearly stated in the §48.6003(b). DHS has already implemented Rider 37.

Comment: The department's own data show less than an estimated 1% of persons enrolled in the CBA program potentially abuse the bypass rule to gain entry into CBA. The bypass rule is working as it should and there is no need to create additional restrictions.

Response: DHS disagrees. Rider 37 already allows Medicaid enrolled NF residents to transfer from the NF to the CBA program. DHS believes it is not equitable for an individual to bypass the interest list unless he is an NF resident enrolled in Medicaid.

Comment: Please retain the current bypass criteria, as they focus on diversion and have proven effective. People who have resided in nursing homes within the last six months should be able to go to the top of the CBA waiting list to target the state's limited slots to those most at risk of nursing home placement. Diversion is more humane, less disruptive, more effective, and cheaper than de-institutionalization.

Response: DHS disagrees that allowing individuals to bypass the interest list ahead of all the individuals on the interest list targets those most at risk of nursing home placement. Many of the 40,000 individuals on the interest list living in the community may also have a high risk of being institutionalized.

Comment: We strongly oppose any eligibility that would require a person to live in a nursing home for a designated period of time before being able to access a waiver program.

Response: DHS agrees that a person should not be required to live in a nursing home for a designated period of time before being able to access a waiver program. Rider 37 would require the individual to continue living in the NF only until his eligibility for CBA is approved. If the individual moves back to the community before being a Medicaid recipient in the NF, the money will not follow the individual. If individuals are allowed to bypass the interest list without the money following them, they will take a CBA slot, thereby denying those individuals who have been waiting for CBA services.

Comment: The proposed revision under §48.6003(b)(3), which enables the department to suspend enrollment, will contribute to unnecessary institutionalization.

Response: DHS agrees that suspending enrollment into the CBA program when appropriated funds for the CBA program are exhausted will lead to institutionalization of some individuals. Without appropriated funds, DHS cannot enroll individuals into any Texas Department of Human Services program.

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

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

§48.6003. Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

(1) be age 21 or above;

(2) meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §19.2409 and §19.2410 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination);

(3) meet the requirements for Preadmission Screening and Annual Resident Review (PASARR) and be determined appropriate for nursing facility care;

(4) choose home and community-based waiver services as an alternative to nursing facility placement based on an informed choice with approval conditional on feasible alternatives available under the waiver in accordance with 42 Code of Federal Regulations §441.302(d)(1);

(5) have an individual plan of care for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) whose cost does not exceed 100% of the individual's actual Texas Index for Level of Effort payment rate;

(6) meet the financial eligibility criteria for waiver services as specified in §48.6007 of this section (relating to Financial Eligibility Criteria); and

(7) have ongoing needs for waiver services whose projected costs, as indicated on the Individual Plan of Care, do not exceed the maximum service ceilings set for those services as listed below:

(A) Adaptive Aids and Medical Supplies service category cannot exceed $10,000 per individual per Individual Plan of Care year without approval by the waiver manager;

(B) minor home modifications service category cannot exceed $7500 per individual without approval by the waiver manager;

(C) respite care cannot exceed 30 days per individual per Individual Plan of Care year without approval by the waiver manager;

(8) receive waiver services within 30 days after waiver eligibility is established and

(9) reside either in his own home or in a licensed personal care facility or adult foster care home contracted with the Texas Department of Human Services to provide Community Based Alternatives (CBA) services. CBA services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed personal care facilities.

(10) meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk as revised in April 1996 and summarized as follows:

(A) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;

(B) has a functional decline in the past 90 days;

(C) has a history of a fall two or more times in past 180 days;

(D) has a neurological diagnosis of Alzheimer's, Head Trauma, Multiple Sclerosis, Parkinsonism, or Dementia;

(E) has a history of nursing facility placement within the last five years;

(F) has multiple episodes of urine incontinence daily; and

(G) goes out of one's residence one or fewer days a week.

(b) Enrollment in the Community Based Alternatives (CBA) program is limited to the number of participants approved by the Centers for Medicare and Medicaid Services (CMS) or the availability of state funding.

(1) Eligible individuals are to be enrolled from the CBA interest list on a "first-come, first-served" basis, except for individuals who meet the following criteria:

(A) children age 21 who are no longer eligible for the Medically Dependent Children Program (MDCP); or

(B) children age 21 who have been receiving nursing services through the Texas Health Steps Program and are no longer eligible.

(2) DHS suspends enrollment into the CBA program as long as the census of program participants exceeds funded limits. For purposes of this section, the census is considered to have exceeded funded limits when DHS determines that the combination of existing caseloads and individuals described in paragraphs (1)(A) and (1)(B) of this subsection exceed funded limits within the current budget period.

(c) Participants may be enrolled in only one waiver program at a time.

(d) The nursing facility risk criteria will be applied at the time of the first annual re-assessment for current Community Based Alternatives Program participants and at the time of initial enrollment for all new applicants.

(e) Individuals transferring from a nursing facility or the Medically Dependent Children Program are exempt from subsection (a)(10) 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 February 12, 2002.

TRD-200200894
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: March 4, 2002
Proposal publication date: August 24, 2001
For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 289. Radiation Control, Subchapter F. License Regulations, §§289.251 and 289.253.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200200975
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 15, 2002

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions with an amendment, as concurrently published in the Proposed Rules section of this issue of the *Texas Register*. This review of Chapter 35 is proposed in accordance with Texas Government Code, §2001.039, and Senate Bill (SB) 178, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

This chapter implemented SB 1876, 75th Legislature, 1997, and continued the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Chapter 35 is organized into the following 12 subchapters.

Subchapter A, Purpose, Applicability, and Definitions, contains provisions addressing the purpose of the chapter, the applicability of the chapter, and definitions that pertain to the chapter.

Subchapter B, Authority of the Executive Director, delineates the duty and eligibility of the executive director regarding emergency and temporary orders.

Subchapter C, General Provisions, specifies when the commission or the executive director may issue emergency and temporary orders, defines the term of an initial and renewal emergency order, and defines the term for a temporary order. Additionally, Subchapter C delineates the application process, the hearing process, the contents of an emergency or temporary order, and the application fees.

Subchapter D, Emergency Suspension of Beneficial Inflows, addresses the procedures and criteria that the commission or the executive director must use during a review of an application by a water right holder who requests the temporary suspension of conditions in the water right relating to beneficial inflow to bays and estuaries and instream uses during an emergency.

Under Subchapter E, Emergency Orders for Utilities, the commission or the executive director may appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations. Additionally, this subchapter delineates when the commission or executive director may authorize an emergency rate increase for a utility, the term of the rate increase, how the request for the increase must be made,

the applicable notice to ratepayers, and the record keeping procedures. Finally, the subchapter authorizes the commission to require that the utility deposit all or part of the rate increase into an interest-bearing escrow account.

Under Subchapter F, Water Quality Emergency and Temporary Orders, the commission may issue temporary orders, and the commission or executive director may issue emergency orders, relating to the discharge of waste or pollutants into or adjacent to any water in the state. Additionally, the subchapter specifies what information must be included in an application, and what the commission or executive director must find before an emergency order is issued.

Under Subchapter G, Solid Waste and Uranium By-product Emergency Orders, the commission or the executive director may issue a mandatory or prohibitory emergency order if an emergency exists requiring immediate action to protect public health and safety or the environment. Additionally, the subchapter specifies the terms and conditions of an emergency or temporary order.

Under Subchapter H, Radioactive Substances and Materials Emergency Orders, the commission or the executive director may issue an emergency order if an emergency exists requiring immediate action to protect public health and safety or the environment. Additionally, the subchapter specifies the terms and conditions of an emergency or temporary order. Subchapter H also provides the commission and the executive director with a mechanism to impound radioactive material possessed by a person not equipped to observe or who fails to observe the provisions of the Texas Radiation Control Act (TRCA) or a license or order issued by the commission under the TRCA, or Chapter 366.

Under Subchapter I, Storage Tank Emergency Orders, the commission or the executive director may issue emergency orders if there is an actual or threatened release of a regulated substance from an underground storage tank, and the emergency order would provide for quicker corrective action than would be possible under Texas Water Code (TWC), Chapter 26. Additionally, this subchapter describes terms and conditions of an emergency order, as well as notice requirements.

Under Subchapter J, Imminent and Substantial Endangerment, the commission or the executive director may issue emergency administrative orders.

Under Subchapter K, Air Orders, the commission or executive director may issue emergency orders to authorize immediate action for the addition, replacement, or repair of facilities or control equipment; and may issue orders authorizing associated emissions of air contaminants, whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. Additionally, the subchapter delineates what must be included in an application for an emergency order, the notice requirements, the required findings, and the content of the emergency order. This subchapter also includes provisions for modifying, affirming, and setting aside an emergency order.

Under Subchapter L, On-site Sewage Disposal System, the commission may issue an order to suspend the registration of an on-site sewage disposal system installer, or to order that an on-site sewage disposal system not be used.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 35 continue to exist. The rules are needed to implement TWC, Chapter 5, Subchapter L, Emergency and Temporary Orders. However, the review has revealed that §35.901, relating to on-site sewage disposal systems, is unclear. Therefore, the commission is concurrently proposing amendments to §35.901 to clarify the meaning.

PUBLIC COMMENT

The commission invites public comment on whether the reasons for the rules in Chapter 35 continue to exist. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-007-035-AD. Comments must be received by 5:00 p.m., April 1, 2002. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

TRD-200200944
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 15, 2002

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Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review: In accordance with the Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, §§21.1 - 21.15, Land Acquisition Procedures; §§21.111 - 21.117, Relocation Assistance and Benefits; and §§21.171 - 21.312, Road Utility Districts.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comment or questions regarding this rule review may be submitted in writing to John P. Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 416-2918.

TRD-200200918
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 14, 2002

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Adopted Rule Reviews

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners adopts the review of Chapter 161 (§§161.1 - 161.5), concerning general provisions pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed rule review was published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 11058).

The Texas State Board of Medical Examiners has determined that the need for this Chapter still exists.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners adopts the repeal of §§161.1 - 161.5 and new §§161.1 - 161.13.

No comments were received regarding adoption of the rule review.

This concludes the rule review of Chapter 161. General Provisions.

TRD-200200973
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: February 15, 2002

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The Texas State Board of Medical Examiners adopts the review of Chapter 181 (§§181.1 - 181.7), concerning contact lens prescriptions, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed rule review was published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 11058).

The Texas State Board of Medical Examiners has determined that the need for this Chapter still exists.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners proposes amendments to §§181.1 - 181.3, 181.5 - 181.7.

No comments were received regarding adoption of the rule review.

This concludes the rule review of Chapter 181. Contact Lens Prescriptions.

TRD-200200974
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: February 15, 2002

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §105.10(c)(1)

MSRP	$20,000
Less Dealer Discount	1,000
Sale Price	$19,000

Figure: 16 TAC §105.10(c)(2)

Advertised Price	$18,000
Less Rebate	500
Sale Price	$17,500

Figure: 16 TAC §105.10(c)(3)

MSRP	$20,000
Less Rebate	500
Less Dealer Discount	500
Sale Price	$19,000

Figure: 16 TAC §401.305(e)(1)

Matching Combinations	Prize Category (One Play)	Odds of Winning
All six matching numbers in one play	First Prize (Jackpot)	1:25,827,165
Any five but not six matching numbers in one play	Second Prize	1:89,678
Any four but not five or six matching numbers in one play	Third Prize	1:1,526
Any three but not four, five or six matching numbers in one play	Fourth Prize	1:75

Figure: 16 TAC §401.312(e)(1)

MATCHING COMBINATIONS	PRIZE CATEGORY (ONE PLAY)	ODDS OF WINNING
Matching all four numbers drawn from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers drawn.	First Prize (Jackpot)	1:1,832,600
Matching all four numbers drawn from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers.	Second Prize	1:53,900
Matching three of four numbers drawn from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers.	Third Prize	1:14,779
Matching three of four numbers drawn from the first field of 35 numbers in addition to matching zero numbers from the second field of 35 numbers.	Fourth Prize	1:435
Matching two of four numbers drawn from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers.	Fifth Prize	1:657
Matching one of four numbers drawn from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers.	Sixth Prize	1:102
Matching zero of four numbers drawn from the first field of 35 numbers in addition to matching the number drawn from the second field of 35 numbers.	Seventh Prize	1:58

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.

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. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of February 8, 2002, through February 14, 2002. The public comment period for these projects will close at 5:00 p.m. on March 22, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: National Energy Group; Location: The project location is in Sabine Lake in State Tract (ST) 8 and 9 in Orange County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled West of Greens Bayou, Texas-Louisiana. Approximate UTM Coordinates: Zone: 15; Easting: 420339; Northing: 3308990. CCC Project No.: 02-0033-F1; Description of Proposed Action: The applicant requests authorization to install and maintain drilling and production structures for the exploration of oil and gas in State Tract (ST) 9 No. 1 Well. Approximately 1,493 cubic yards of crushed shell material will be required to construct a 210-foot-long by 64-foot-wide pad. Water depth at the well site is approximately -7 feet mean low tide (MLT). In addition, the applicant requests authorization to install 2,355 linear feet of a 4-inch diameter flowline to support the production of ST 9 No. 1 Well. The proposed flowline would be installed by trenching or jetting, depending upon bottom conditions, and buried at a minimum of 3 feet below the mudline. The flowline will originate at the proposed ST 9 No. 1 Well and terminate at the ST 8 No. 1 Well. Type of Application: U.S.A.C.E. permit application #22587 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Sabco Operating Company; Location: The project location is in Corpus Christi Bay in State Tracts 49 and 50, approximately 6.2 miles southeast of downtown Corpus Christi, Nueces County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Portland, Texas. Approximate UTM Coordinates: Zone: 14; Easting: 669143; Northing: 3071461. CCC Project No.: 02-0034-F1; Description of Proposed Action: The applicant proposes to drill Well # 5 from a surface location in State Tract 50 with the bottom hole located in State Tract 49. An existing well pad would be utilized to support the drilling barge for the project. In addition, the applicant proposes to install three 2-7/8 outside-diameter pipelines from the surface location of Well #5 (State Tract 50) to an existing production platform in State Tract 49. Water depth at the proposed project site is -20 feet mean low tide. Type of Application: U.S.A.C.E. permit application #22571 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Gulf Coast Pipe Line, L.P.; Location: The proposed pipeline would originate at the Shell facility in Deer Park, Harris County, Texas and terminate at the Equistar facility in Mont Belvieu, Chambers County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled LaPorte, Texas and Mont Belvieu, Texas. Approximate UTM Coordinates for the origin: Zone: 15; Easting: 3197506; Northing: 13827840. Approximate UTM Coordinates for the terminus: Zone: 15; Easting: 3269207; Northing: 13882839. CCC Project No.: 02-0035-F1; Description of Proposed Action: The applicant proposes to construct an 18.7969-mile-long, 8-inch diameter pipeline to transport crude. The pipeline would be installed in an existing pipeline corridor and/or parallel existing pipelines. The applicant is proposing a 60-foot-wide temporary construction right-of-way that would revert to a 30-foot-wide permanent right-of-way upon completion of construction. A small amount of clearing (varying from 0 feet to 30 feet) in forested wetlands would be required for the proposed work. The wooded area in a 23-foot-wide drainage swale, located to the east of Cedar Bayou-Old Channel, would require 30

feet of temporary clearing. Cedar Bayou-Old Channel and Cedar Bayou-New Channel would be crossed using a directional drill installation method. Approximately 10 feet of wooded wetland area would have to be cleared from within the permanent right-of-way for a distance of 183 feet. The proposed pipeline construction through Crystal Bay would require a 150-foot-wide temporary construction right-of-way that would revert to a 30-foot-wide permanent right-of-way upon completion of construction. If feasible, the pipeline would be installed using a jetting method rather than a bucket dredge method. In dry land and upland areas the pipeline would be installed by conventional open-ditch pipe lay methods. In order to avoid and/or minimize environmental impacts, in wetland and marsh/swamp areas the pipeline would be installed by directional drill and by push-pull pipeline construction installation methods. One temporary push site, approximately 100 feet by 150 feet in size, would be required on the east bank of Crystal Bay. The proposed pipeline crossing of the marsh areas and of most waterways would be installed by horizontal directional drill construction installation methods. Nine 100- by 150-foot temporary drill rig sites would be required. It is anticipated that only the Santa Anna Bayou east bank temporary drill site may be located in a wetland area. The Santa Anna Bayou marsh and the Brownwood Subdivision marsh would be directionally drilled. Approximately 530 feet of marsh may be impacted between the east Santa Anna drill site and the west Houston Ship Channel drill site. In wetland areas, the typical ditch would be 15 feet wide at the top with a 3-foot-wide bottom. In upland areas, the typical ditch would be 7 feet wide at the top with a 3-foot-wide bottom. The pipeline would be buried a minimum of 3 feet deep. Excavated pipe trench materials would be temporarily stored along side of the pipe ditch and used as pipe ditch backfill material upon completion of pipeline installation. Fill materials would be installed at proposed pipeline system valve sites to elevate grade to an elevation suitable for pipeline operations. Approximately 1,554 cubic yards of native soils would be excavated form the wetland pipe ditch. Approximately 13,696 cubic yards of native soils would be excavated at open cut waterway crossings. Approximately 61,430 cubic yards of soil would be excavated in upland areas. The proposed pipeline ditch would be excavated using a marsh buggy excavator, trackhoe, or dragline, and the excavated material would be temporarily stored along the side of the pipe ditch. Upon completion of pipeline installation, the excavated soil materials would be used as pipe ditch backfill material. Natural grade would be returned to as near as possible to the preconstruction contour. Approximately 0.02 acres of forested wetlands would be temporarily impacted and 0.04 acres of forested wetlands would be permanently impacted during construction and installation operations. Approximately 0.41 acres of fresh/intermediate marsh would be temporarily impacted during pipeline construction. Approximately 0.97 acres of wetland areas, such as pastures, fields, and existing pipeline right-of-ways, would be temporarily impacted by the proposed work. Approximately 12.58 acres of water bottoms would be temporarily impacted during the installation of the pipeline. Type of Application: U.S.A.C.E. permit application #22570 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Cabot Oil & Gas Corporation; Location: The project location is in and near Corpus Christi Bayou in Corpus Christi Bay in State Tracts 283, 284 and 285 in Nueces County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Estes, Texas. Approximate UTM Coordinates: Zone: 14; Easting: 687337; Northing: 3087275. CCC Project No.: 02-0038-F1; Description of Proposed Action: The applicant proposes to install, operate and maintain a 6-inch pipeline to transport produced hydrocarbons from Well No. 1 in State Tract (ST) 285. In addition, the applicant proposes to enlarge the permitted 15- by 20-foot production platform at this well to a 50- by 50-foot structure with a 10-foot-wide by 65-foot long walkway to connect it to a well protector platform. From Well No. 1 the proposed pipeline would be installed through the Corpus Christi Bayou, crossing ST 284, and then into ST 283. The applicant is considering one of two options for the termination of the pipeline. In option 1, the proposed pipeline would leave ST 283 and bear south towards an existing well in ST 284. The pipeline would terminate at a proposed 50- by 50-foot attendant platform. This platform would be connected to the existing well protector platform by a 10- by 65-foot walkway. For this option the total length of the pipeline would be approximately 5,107 feet. In the second option, the pipeline would tie into an existing pipeline in State Tract 283. The total length of the pipeline for this option would be approximately 4,472 feet. For either option, the pipeline would be installed by jetting or trenching to 3 feet minimum cover, in water approximately -6 feet MLT. No dredging would be required; however, approximately 1,700 cubic yards of material would be temporarily displaced during installation of the pipeline. Type of Application: U.S.A.C.E. permit application #22283(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

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. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200201026
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 20, 2002

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Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapters 403, Section 2305.038, Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The notice of request for proposals (RFP #128B) was published in the September 21, 2001, issue of the *Texas Register* at 26 TexReg 7325.

Notice of Contract Awards in connection with Comptroller's Request for Proposals (RFP #128b) for Energy Engineering Services for the Schools and Local Governments Program. The Request for Proposals was published in the September 21, 2001, issue of the *Texas Register*, at 26 TexReg 7325. Comptroller of Public Accounts, State Energy Conservation Office (SECO), announces the following contract awards under this RFP.

Three contracts (one each) were awarded to the following firms for professional engineering services for the Schools and Local Governments Program:

The contracts were awarded to: 1) Estes, McClure and Associates, 3608 West Way, Tyler, Texas 75703. The total amount of the contract is not to exceed $200,000.00. The term of the contract is January 1, 2002 through December 31, 2002; 2) Energy Systems Associates, Inc., 595 Round Rock West Drive, Suite 704, Round Rock, Texas 78681. The total amount of the contract is not to exceed $200,000.00. The term of the contract is January 1, 2002 through December 31, 2002; and 3) Texas Energy Engineering Services, Inc., 1301 Capital of Texas Highway, Suite B-325, Austin, Texas 78746. The total amount of the contract is not to exceed $200,000.00. The term of the contract is January 1, 2002 through December 31, 2002.

TRD-200201025
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 20, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/18/02 - 02/24/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 02/18/02 - 02/24/02 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200200985
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 15, 2002

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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 Sec. 303.003 and Sec. 303.009 for the period of 02/25/02 - 03/03/02 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/25/02 - 03/03/02 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 03/01/02 - 03/31/02 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 03/01/02 - 03/31/02 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-200201011
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 20, 2002

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East Texas Council of Governments

Solicitation for Individuals Interested in Serving as Independent Reviewers

Public Notice

This is a solicitation for individuals interested in serving as independent reviewers of proposals to be submitted to the East Texas Workforce Development Board for (1) Workforce Centers operations and (2) employment and training services offered through the Workforce Investment Act, the Temporary Assistance to Needy Families Program, the Welfare -to-Work Program and the Food Stamp Employment and Training Program.

This review process requires that the panel of independent reviewers be on site at a location in the East Texas Council of Governments (ETCOG) region for a period of three to four days depending upon the number of proposals or the complexity of the procurement. ETCOG, administrative entity for the East Texas Workforce Development Area, will be responsible for engaging the services of the independent reviewers

The review of proposals is scheduled to occur on April 15, 16, and 17, 2002 . The ratings of the reviewers will be considered by the Workforce Centers Committee of the East Texas Workforce Development Board as they develop a recommendation for subcontract awards. Reviewers will be paid $450 per day, plus expenses. Reviewers will be paid $50 for reading the Request for Proposals (RFP) prior to arriving on-site. Also, depending on the number of proposals received, reviewers may be asked to read proposals prior to coming to East Texas for the formal review. Reviewers will be paid $100 per Proposal for reading each Proposal prior to arriving on-site.

Individuals interested in serving as Independent Reviewers should submit a resume, along with a cover letter indicating their availability on the proposed dates. Selection of the reviewers shall be based upon professional experience with and knowledge of employment and training programs and the ability to commit the time required to complete the review process. (Knowledge of Workforce Center operations is preferred.)

Submissions must be in writing and are due at 5:00 p.m. Central Time on March 13, 2002. Facsimile and e-mail submissions are acceptable. All correspondence should be sent to the attention of:

Gary Allen, Section Chief - Planning and Board Support East Texas Council of Governments 3800 Stone Road Kilgore, Texas 75662 Phone (903) 984-8641 Fax (903) 983-1440 E-mail gary.allen@twc.state.tx.us

Anyone having questions regarding this process should contact Wendell Holcombe, Director of Workforce Development Programs, or Gary Allen at the address listed above.

TRD-200201010
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: February 19, 2002

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Commission on State Emergency Communications

Distribution Percentages for Wireless Service Fee Revenue

Pursuant to 1 TAC §252.6 (concerning wireless service fee proportional distribution) and based upon feedback from wireless revenue recipients, the following will be incorporated into the proposed distribution schedule.

Attached is a proposed revised schedule of distribution percentages for the 9-1-1 Wireless Service Fee. This is a revision from the schedule of distribution percentages published in the September 28, 2001, issue of the *Texas Register* (26 TexReg 7623). Once adopted, these percentages will be used for distributions made through November 9, 2002. The population amounts were derived from the 2000 US Census information published by the Department of Rural Sociology at Texas A&M University.

The revisions were necessitated by the withdrawal of the City of Corpus Christi from the Coastal Bend Council of Governments regional 9-1-1 program. If the revised distribution chart is approved by the Commission, the City of Corpus Christi will receive a separate distribution. The only changes to the schedule are a reduction in Coastal Bend's percentage and the addition of the City of Corpus Christi as a recipient of wireless service fees. All other percentages remain the same.

If a jurisdiction wishes to change the schedule, it must show the change to itself and the change to another jurisdiction, the net affect of the two changes being zero on the total schedule. Changes must be coordinated between jurisdictions before requesting them from the Commission on State Emergency Communications (CSEC).

All changes to and comments on the schedule must be received by the CSEC by Monday, March 4, 2002. Once all changes have been incorporated in the schedule, it will be presented to the Commission for adoption at its next public meeting on March 8, 2002. Comments and changes can be sent to Brian P. Millington by email (brian.millington@csec.state.tx.us) or by fax (512) 305-6937, or to the following address: 333 Guadalupe Street, Suite 2-212 Austin, Texas 78701-3942.

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from February 11, 2002 - November 9, 2002
Revised to Add City of Corpus Christi

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Atascosa	38,628			38,628	
Bandera	17,645			17,645	
Frio	16,252			16,252	
Gillespie	20,814			20,814	
Karnes	15,446			15,446	
Kendall	23,743			23,743	
Wilson	32,408			32,408	
AACOG Total	**164,936**			**164,936**	**0.7910%**
Bowie	89,306			89,306	
Cass	30,438			30,438	
Delta	5,327			5,327	
Franklin	9,458			9,458	
Hopkins	31,960			31,960	
Lamar	48,499			48,499	
Morris	13,048			13,048	
Red River	14,314			14,314	
Titus	28,118			28,118	
ATCOG Total	**270,468**			**270,468**	**1.2971%**
Burleson	16,470			16,470	
Grimes	23,552			23,552	
Leon	15,335			15,335	
Madison	12,940			12,940	
Robertson	16,000			16,000	
Washington	30,373			30,373	
BVDC Total	**114,670**			**114,670**	**0.5499%**
Bastrop	57,733			57,733	
Blanco	8,418			8,418	
Burnet	34,147			34,147	
Caldwell	32,194			32,194	
Fayette	21,804			21,804	
Hays	97,589			97,589	
Lee	15,657			15,657	
Llano	17,044			17,044	
Travis	812,280			812,280	
Williamson	249,967			249,967	
CAPCO Total	**1,346,833**			**1,346,833**	**6.4591%**
Bell	237,974			237,974	
Coryell	74,978			74,978	
Hamilton	8,229			8,229	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from February 11, 2002 - November 9, 2002
Revised to Add City of Corpus Christi

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Lampasas	17,762			17,762	
Milam	24,238			24,238	
Mills	5,151			5,151	
San Saba	6,186			6,186	
CTCOG Total	**374,518**			**374,518**	**1.7961%**
Aransas	22,497			22,497	
Bee	32,359			32,359	
Brooks	7,976			7,976	
Duval	13,120			13,120	
Jim Wells	39,326			39,326	
Kenedy	414			414	
Kleberg	31,549			31,549	
Live Oak	12,309			12,309	
McMullen	851			851	
Nueces	313,645	Corpus Christi	(277,454)	36,191	
Refugio	7,828			7,828	
San Patricio	67,138	Portland	(14,827)		
		Aransas Pass	(8,138)	44,173	
CBCOG Total	**549,012**			**248,593**	**1.1922%**
Coke	3,864			3,864	
Concho	3,966			3,966	
Crockett	4,099			4,099	
Irion	1,771			1,771	
Kimble	4,468			4,468	
McCulloch	8,205			8,205	
Mason	3,738			3,738	
Menard	2,360			2,360	
Reagan	3,326			3,326	
Schleicher	2,935			2,935	
Sterling	1,393			1,393	
Sutton	4,077			4,077	
Tom Green	104,010			104,010	
CVCOG Total	**148,212**			**148,212**	**0.7108%**
Angelina	80,130			80,130	
Houston	23,185			23,185	
Jasper	35,604			35,604	
Nacogdoches	59,203			59,203	
Newton	15,072			15,072	
Polk	41,133			41,133	
Sabine	10,469			10,469	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
San Augustine	8,946			8,946	
San Jacinto	22,246			22,246	
Shelby	25,224			25,224	
Trinity	13,779			13,779	
Tyler	20,871			20,871	
DETCOG Total	**355,862**			**355,862**	**1.7066%**
Anderson	55,109			55,109	
Camp	11,549			11,549	
Cherokee	46,659	Reklaw	(327)	46,332	
Gregg	111,379	Kilgore	(11,301)		
		Longview	(73,344)	26,734	
Marion	10,941			10,941	
Panola	22,756	Tatum	(1,175)	21,581	
Rains	9,139			9,139	
Upshur	35,291			35,291	
Van Zandt	48,140			48,140	
Wood	36,752			36,752	
ETCOG Total	**387,715**			**301,568**	**1.4462%**
De Witt	20,013			20,013	
Goliad	6,928			6,928	
Gonzales	18,628			18,628	
Jackson	14,391			14,391	
Lavaca	19,210			19,210	
Victoria	84,088			84,088	
GCRPC Total	**163,258**			**163,258**	**0.7829%**
Bosque	17,204			17,204	
Falls	18,576			18,576	
Freestone	17,867			17,867	
Hill	32,321			32,321	
Limestone	22,051			22,051	
HOTCOG Total	**108,019**			**108,019**	**0.5180%**
Brazoria	241,767	Pearland	(37,640)	204,127	
Chambers	26,031			26,031	
Colorado	20,390			20,390	
Fort Bend	354,452	Katy	(11,775)		
		Meadows	(4,912)		
		Missouri City	(52,913)		
		Stafford	(15,681)		
		Sugar Land	(63,328)	205,843	

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from February 11, 2002 - November 9, 2002
Revised to Add City of Corpus Christi

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Liberty	70,154			70,154	
Matagorda	37,957			37,957	
Walker	61,758			61,758	
Waller	32,663	Waller	(2,092)	30,571	
Wharton	41,188			41,188	
HGAC Total	**886,360**			**698,019**	**3.3475%**
Hidalgo	569,463			569,463	
Willacy	20,082			20,082	
LRGVDC Total	**589,545**			**589,545**	**2.8273%**
Dimmit	10,248			10,248	
Edwards	2,162			2,162	
Kinney	3,379			3,379	
La Salle	5,866			5,866	
Maverick	47,297			47,297	
Real	3,047			3,047	
Uvalde	25,926			25,926	
Val Verde	44,856			44,856	
Zavala	11,600			11,600	
MRGDC Total	**154,381**			**154,381**	**0.7404%**
Archer	8,854			8,854	
Baylor	4,093			4,093	
Clay	11,006			11,006	
Cottle	1,904			1,904	
Foard	1,622			1,622	
Hardeman	4,724			4,724	
Jack	8,763			8,763	
Montague	19,117			19,117	
Young	17,943			17,943	
NRPC Total	**78,026**			**78,026**	**0.3742%**
Collin	491,675	Dallas	(50,822)		
		Frisco	4,046		
		Garland	(16)		
		Plano	(219,074)		
		Richardson	(21,380)		
		Wylie	(14,882)	189,547	
Dallas		Balch Springs	19,375		
		Cockrell Hill	4,443		
		Sachse	7,898		
		Seagoville	10,817		

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from February 11, 2002 - November 9, 2002
Revised to Add City of Corpus Christi

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Wilmer	3,393	45,926	
Ellis	111,360	Cedar Hill	(642)		
		Ennis	(16,045)		
		Glenn Heights	(1,589)		
		Grand Prairie	(30)		
		Mansfield	(280)		
		Ovilla	272	93,046	
Erath	33,001			33,001	
Hood	41,100			41,100	
Hunt	76,596			76,596	
Johnson	126,811	Burleson	(17,554)		
		Mansfield	(561)	108,696	
Kaufman	71,313	Combine	626	71,939	
Navarro	45,124			45,124	
Palo Pinto	27,026			27,026	
Parker	88,495	Azle (16%)	(1,536)	86,959	
Rockwall	43,080	Dallas	(93)		
		Rowlett	(7,120)		
		Wylie	(310)	35,557	
Somervell	6,809			6,809	
Wise	48,793			48,793	
NCTCOG Total	**1,211,183**			**910,119**	**4.3647%**
Andrews	13,004			13,004	
Borden	729			729	
Crane	3,996			3,996	
Dawson	14,985			14,985	
Gaines	14,467			14,467	
Glasscock	1,406			1,406	
Loving	67			67	
Martin	4,746			4,746	
Pecos	16,809			16,809	
Reeves	13,137			13,137	
Terrell	1,081			1,081	
Upton	3,404			3,404	
Ward	10,909			10,909	
Winkler	7,173			7,173	
PBRPC Total	**105,913**			**105,913**	**0.5079%**
Armstrong	2,148			2,148	
Briscoe	1,790			1,790	
Carson	6,516			6,516	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Castro	8,285			8,285	
Childress	7,688			7,688	
Collingsworth	3,206			3,206	
Dallam	6,222			6,222	
Deaf Smith	18,561			18,561	
Donley	3,828			3,828	
Gray	22,744			22,744	
Hall	3,782			3,782	
Hansford	5,369			5,369	
Hartley	5,537			5,537	
Hemphill	3,351			3,351	
Hutchinson	23,857			23,857	
Lipscomb	3,057			3,057	
Moore	20,121			20,121	
Ochiltree	9,006			9,006	
Oldham	2,185			2,185	
Parmer	10,016			10,016	
Roberts	887			887	
Sherman	3,186			3,186	
Swisher	8,378			8,378	
Wheeler	5,284			5,284	
PRPC Total	**185,004**			**185,004**	**0.8872%**
Brewster	8,866			8,866	
Culberson	2,975			2,975	
Hudspeth	3,344			3,344	
Jeff Davis	2,207			2,207	
Presidio	7,304			7,304	
RGCOG Total	**24,696**			**24,696**	**0.1184%**
Hardin	48,073			48,073	
Jefferson	252,051			252,051	
Orange	84,966			84,966	
SETRPC Total	**385,090**			**385,090**	**1.8468%**
Bailey	6,594			6,594	
Cochran	3,730			3,730	
Crosby	7,072			7,072	
Dickens	2,762			2,762	
Floyd	7,771			7,771	
Garza	4,872			4,872	
Hale	36,602	Abernathy	(2,839)		
		Plainview	(22,336)	11,427	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Hockley	22,716			22,716	
Kent	859			859	
King	356			356	
Lamb	14,709			14,709	
Lynn	6,550			6,550	
Motley	1,426			1,426	
Terry	12,761			12,761	
Yoakum	7,322			7,322	
SPAG Total	**136,102**			**110,927**	**0.5320%**
Jim Hogg	5,281			5,281	
Starr	53,597			53,597	
Webb	193,117			193,117	
Zapata	12,182			12,182	
STDC Total	**264,177**			**264,177**	**1.2669%**
Cooke	36,363			36,363	
Fannin	31,242			31,242	
Grayson	110,595	Denison	(22,773)		
		Sherman	(35,082)	52,740	
TCOG Total	**178,200**			**120,345**	**0.5771%**
Brown	37,674			37,674	
Callahan	12,905			12,905	
Coleman	9,235			9,235	
Comanche	14,026			14,026	
Eastland	18,297			18,297	
Fisher	4,344			4,344	
Haskell	6,093			6,093	
Jones	20,785			20,785	
Knox	4,253			4,253	
Mitchell	9,698			9,698	
Nolan	15,802			15,802	
Runnels	11,495			11,495	
Scurry	16,361			16,361	
Shackelford	3,302			3,302	
Stephens	9,674			9,674	
Stonewall	1,693			1,693	
Throckmorton	1,850			1,850	
WCTCOG Total	**197,487**			**197,487**	**0.9471%**
Smith	174,706			174,706	
9-1-1 Network of East Texas	**174,706**			**174,706**	**0.8378%**

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Taylor	126,555			126,555	
Abilene/Taylor Cty. 9-1-1	**126,555**			**126,555**	**0.6069%**
Austin	23,590			23,590	
Austin Cty. Emg. Comm. District	**23,590**			**23,590**	**0.1131%**
Bexar	1,392,931			1,392,931	
Comal	78,021			78,021	
Guadalupe	89,023			89,023	
Bexar Metro 9-1-1 Network District	**1,559,975**			**1,559,975**	**7.4812%**
Brazos	152,415			152,415	
Brazos Cty. Emerg. Comm. District	**152,415**			**152,415**	**0.7309%**
Calhoun	20,647			20,647	
Calhoun Cty. 9-1-1 Emg. Comm. District	**20,647**			**20,647**	**0.0990%**
Cameron	335,227			335,227	
Cameron Cty. Emg. Comm. District	**335,227**			**335,227**	**1.6077%**
Dallas	2,218,899	Addison	(14,166)		
		Balch Springs	(19,375)		
		Carrollton	(49,309)		
		Cedar Hill	(31,451)		
		Cockrell Hill	(4,443)		
		Combine	(626)		
		Coppell	(35,652)		
		Dallas	(1,111,949)		
		DeSoto	(37,646)		
		Duncanville	(36,081)		
		Farmers Branch	(27,508)		
		Garland	(215,752)		
		Glenn Heights	(5,635)		
		Grand Prairie	(99,393)		
		Highland Park	(8,842)		
		Hutchins	(2,805)		
		Irving	(191,615)		
		Lancaster	(25,894)		
		Mesquite	(124,523)		
		Ovilla	(272)		
		Richardson	(70,422)		
		Rowlett	(37,383)		

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Sachse	(7,898)		
		Seagoville	(10,817)		
		University Park	(23,324)		
		Wilmer	(3,393)		
		Wylie	(310)	22,415	
Dallas SO (District)	**2,218,899**			**22,415**	**0.1075%**
Denton	432,976	Carrollton	49,309		
		Coppell	(306)		
		Dallas	(25,716)		
		Fort Worth	(3)		
		Frisco	(4,046)		
		Plano	(2,956)		
		Southlake	(409)	448,849	
Denco Area 9-1-1 District	**432,976**			**448,849**	**2.1526%**
El Paso	679,622			679,622	
El Paso Cty. 9-1-1 District	**679,622**			**679,622**	**3.2593%**
Ector	121,123			121,123	
Emg. Comm. District of Ector Cty.	**121,123**			**121,123**	**0.5809%**
Galveston	250,158	Friendswood	(29,037)		
		League City	(45,444)	175,677	
Galveston Cty. Emg. Comm. District	**250,158**			**175,677**	**0.8425%**
Harris	3,400,578	Friendswood	29,037		
		Katy	11,775		
		League City	45,444		
		Meadows	4,912		
		Pearland	37,640		
		Stafford	15,681		
		Sugar Land	63,328		
		Waller	2,092		
		Missouri City	52,913	3,663,400	
Greater Harris Cty. 9-1-1 Emg. Network	**3,400,578**			**3,663,400**	**17.5687%**
Henderson	73,277			73,277	
Henderson Cty. 9-1-1 Comm. District	**73,277**			**73,277**	**0.3514%**
Howard	33,627			33,627	
Howard Cty. 9-1-1 Comm. District	**33,627**			**33,627**	**0.1613%**
Kerr	43,653			43,653	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Kerr Cty. Emg. 9-1-1 Network	43,653			43,653	0.2093%
Lubbock	242,628	Abernathy	2,839		
		Plainview	22,336	267,803	
Lubbock Cty. Emg. Comm. District	**242,628**			**267,803**	**1.2843%**
McLennan	213,517			213,517	
McLennan Cty. Emg. Assistance District	**213,517**			**213,517**	**1.0240%**
Medina	39,304			39,304	
Medina Cty. 9-1-1 District	**39,304**			**39,304**	**0.1885%**
Midland	116,009			116,009	
Midland Emg. Comm. District	**116,009**			**116,009**	**0.5563%**
Montgomery	293,768			293,768	
Montgomery Cty. Emg. Comm. District	**293,768**			**293,768**	**1.4088%**
Wichita	131,664			131,664	
Wilbarger	14,676			14,676	
Nortex 9-1-1 Comm. District	**146,340**			**146,340**	**0.7018%**
Potter	113,546			113,546	
Randall	104,312			104,312	
Potter-Randall Cty. Emg. Comm. District	**217,858**			**217,858**	**1.0448%**
Tarrant	1,446,219	Azle	1,536		
		Burleson	17,554		
		Fort Worth	3		
		Mansfield	841		
		Grand Prairie	99,423		
		Irving	191,615		
		Southlake	409	1,757,600	
Tarrant Cty. 9-1-1 District	**1,446,219**			**1,757,600**	**8.4290%**
Harrison	62,110			62,110	
Rusk	47,372	Reklaw	327		
		Tatum	1,175	48,874	
Texas Eastern 9-1-1 Network	**109,482**			**110,984**	**0.5323%**
Cedar Hill			32,093		
DeSoto			37,646		
Duncanville			36,081	105,820	
Southwest Regional Communications Center				**105,820**	**0.5075%**

Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from February 11, 2002 - November 9, 2002
Revised to Add City of Corpus Christi

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Addison Police Department			14,166	14,166	0.0679%
Aransas Pass Police Department			8,138	8,138	0.0390%
City of Dallas Emg. Comm. Office			1,188,580	1,188,580	5.7001%
City of Longview PSAP			73,344	73,344	0.3517%
Coppell Police Department			35,958	35,958	0.1724%
Corpus Christi			277,454	277,454	1.3306%
Denison Fire Department			22,773	22,773	0.1092%
Ennis Police Department			16,045	16,045	0.0769%
Farmers Branch Police Department			27,508	27,508	0.1319%
Garland Police Department			215,768	215,768	1.0348%
Glenn Heights Police Department			7,224	7,224	0.0346%
Highland Park Department of Public Safety			8,842	8,842	0.0424%
Hutchins Police Department			2,805	2,805	0.0135%
Kilgore Police Department			11,301	11,301	0.0542%
Lancaster Fire/Police Department			25,894	25,894	0.1242%
Mesquite Police Department			124,523	124,523	0.5972%
Portland Police Department			14,827	14,827	0.0711%
Plano			222,030	222,030	1.0648%
Richardson Police Department			91,802	91,802	0.4403%
Rowlett Police and Fire Comm. Center			44,503	44,503	0.2134%
Sherman Police Department			35,082	35,082	0.1682%
University Park Police Department			23,324	23,324	0.1119%
Wylie			15,502	15,502	0.0743%
Grand Total	**20,851,820**			**20,851,820**	**100.0%**

Data Source: 2000 US Census information from the Texas Data Center, Department of Rural Sociology, Texas Agricultural Experiment Station, Texas A&M University. Tables #20 and #26 were used. Web Site Address: http://txsdc.tamu.edu.
http://txsdc.tamu.edu/data/census/2000/redistrict/pl94-171/desctab/tot_tab26.txt
http://txsdc.tamu.edu/data/census/2000/redistrict/pl94-171/desctab/tot_tab20.txt

TRD-200201003

Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: February 19, 2002

Texas Department of Health

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
Dallas	MDI Holdings Inc	L05501	Dallas	00	02/14/02
Houston	Insight Health Service Corporation	L05504	Houston	00	02/12/02
Texarkana	Texarkana PET Imaging Institute LP	L05495	Texarkana	00	02/13/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Northwest Texas Healthcare System Inc	L02054	Amarillo	66	02/11/02
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	68	02/07/02
Austin	Texas Department of Health	L01594	Austin	27	02/06/02
Austin	Motorola	L05347	Austin	03	02/08/02
Austin	Central Texas Oncology Associates PA	L05429	Austin	01	02/14/02
Baytown	Exxonmobil Refining and Supply Company	L01134	Baytown	52	02/07/02
Beaumont	Lamar University	L04047	Beaumont	16	02/05/02
Bedford	Columbia North Hills Hospital Subsidiary LP	L03455	Bedford	31	02/04/02
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	07	02/01/02
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	08	02/15/02
Dallas	Cor Specialty Associates of North Texas PA	L04694	Dallas	18	02/01/02
Dallas	Southern Methodist University	L02887	Dallas	15	02/07/02
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	29	02/11/02
Del Rio	Val Verde Regional Medical Center	L01967	Del Rio	20	02/08/02
Denison	The Pillsbury Company	L03727	Denison	11	01/31/02
El Paso	El Paso Heart Clinic	L04828	El Paso	08	01/31/02
El Paso	Providence Memorial Hospital	L02353	El Paso	67	02/08/02
El Paso	Southwestern General Hospital	L02338	El Paso	27	02/12/02
Fort Worth	Kindred Hospitals Limited Partnership	L04873	Fort Worth	06	02/11/02
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	81	02/13/02
Hillsboro	Hill Regional Hospital	L01949	Hillsboro	29	02/06/02
Houston	Digirad Imaging Solutions Inc	L05414	Houston	01	02/01/02
Houston	Digirad Imaging Solutions Inc	L05414	Houston	02	02/08/02
Houston	Texas Southern University	L03121	Houston	18	02/11/02

Houston	Memorial Hermann Hospital System	L01168	Houston	64	02/12/02
Houston	Baker Hughes Oilfield Operations Inc	L00446	Houston	136	02/14/02
Kilgore	Roy H Laird Memorial Hospital	L03496	Kilgore	15	02/04/02
Lufkin	Piney Woods Healthcare System LP	L01842	Lufkin	40	02/05/02
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	69	02/08/02
McAllen	McAllen Hospitals LP	L01713	McAllen	63	02/07/02
Mission	Mission Hospital	L02802	Mission	32	02/12/02
N Richland Hills	Columbia North Hills Hospital Subsidiary LP	L02271	N Richland Hills	39	02/04/02
Odessa	Odessa Heart Institute	L05439	Odessa	02	02/08/02
Paris	Christus St Josephs Health System	L03199	Paris	21	02/07/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Paris	Texas Oncology PA	L05489	Paris	02	02/04/02
Paris	Christus St Josephs Health System	L02457	Paris	19	02/07/02
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	67	02/13/02
Richardson	The University of Texas at Dallas	L02114	Richardson	47	02/04/02
Round Rock	Austin Heart PA	L05456	Round Rock	01	02/13/02
San Antonio	Baptist Imaging Center	L04506	San Antonio	32	02/04/02
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	05	02/06/02
San Antonio	Southwest Genetics	L04490	San Antonio	08	02/06/02
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	23	02/14/02
Texarkana	Christus Health Ark-La-Tex	L04805	Texarkana	12	02/07/02
Throughout Tx	ICO Worldwide Inc	L01884	Houston	34	02/06/02
Throughout Tx	The Whole Computer	L05244	San Antonio	02	02/06/02
Throughout Tx	CB&I Contructors Inc	L01902	Houston	49	02/06/02
Throughout Tx	Unitor Ship Service Inc	L04483	Pasadena	05	02/06/02
Throughout Tx	Gulf Coast Weld Spec	L05426	Orange	10	02/04/02
Throughout Tx	Bonded Inspections Inc	L00693	Garland	60	02/04/02
Throughout Tx	Professional Service Industries Inc	L04939	Corpus Christi	06	02/04/02
Throughout Tx	Professional Service Industries Inc	L04942	Houston	15	02/04/02
Throughout Tx	Metco	L03018	Houston	119	02/01/02
Throughout Tx	GCT Inspection Inc	L02378	South Houston	60	02/04/02
Throughout Tx	Ground Technology	L05125	Houston	06	02/0102

Throughout Tx	N-Spec Quality Services Inc	L05113	Corpus Christi	14	02/01/02
Throughout Tx	Fugro South Inc	L03461	Dallas	20	02/01/02
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	114	02/07/02
Throughout Tx	Southern Services Inc	L05270	Lake Jackson	19	02/08/02
Throughout Tx	Xcel Energy	L05238	Amarillo	05	02/11/02
Throughout Tx	Escot NDE Inc	L05002	Corpus Christi	12	02/08/02
Throughout Tx	Shell Chemical LP	L04993	Deer Park	07	02/08/02
Throughout Tx	Houston City of Dept of Hlth & Human Serv	L00149	Houston	67	02/07/02
Throughout Tx	N-Spec Quality Services Inc	L05113	Corpus Christi	15	02/08/02
Throughout Tx	STP Nuclear Operating Company	L04222	Wadsworth	16	02/12/02
Throughout Tx	Transystems Corporation	L05280	Fort Worth	01	02/14/02
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	38	02/15/02
Trinity	East Texas Medical Center Trinity	L05392	Trinity	01	02/06/02
Tyler	East Texas Medical Center	L00977	Tyler	90	02/13/02
Victoria	Equistar Chemicals LP	L04101	Victoria	16	02/14/02

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Georgetown	Southwestern University at Georgetown	L00372	Georgetown	19	02/12/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Instrument Control Service % Solutia Facility	L04561	Alvin	04	02/01/02
Houston	DCH Health Services	L00131	Houston	40	02/01/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, 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 25 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 new, amended, or renewed

license (s) or the issuance of the exemption (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 demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A 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-200201023
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Notice of Agreed Order on Healthsouth Diagnostic Center of Texas, L.P., dba Healthsouth Diagnostic Center

On January 28, 2002, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, approved the settlement agreement between the bureau and Healthsouth Diagnostic Center of Texas, L.P., doing business as Healthsouth Diagnostic Center of Arlington (registrant-M00366) of Arlington. A total administrative penalty in the amount of $2,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200201021
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Doctors Hospital 1997 LP, Houston, R00585; Christine Walker, M.D., Forney, R02621; San Gabriel Clinic, Georgetown, R12402; First Care Medical Center, Carrollton, R16848; Sugar Land Orthopaedic Specialist, Sugar Land, R24072; San Antonio MFCA Limited Partnership, San Antonio, R24243; Ugarte Family Medical Clinic, Kingsville, R25120; Valley Clinic, San Antonio, R25576; Beamin Lasers-Todd W. Rogers, Phoenix, Arizona, Z01402; Latino American Dental, Houston, R21498; Mark D. Barnett, D.D.S., Addison, R20449; Bob J. Martin, D.D.S., Houston, R18798; Maynard B. Cook, D.D.S., Fort Worth, R16063; 1st Chiropractic Group, Conroe, R24537; Family Healthcare Chiropractic Center, PC, Cleburne, R20461; National X-Ray Services, Maple Plain, Minnesota, R24693; Multi Vendor Solutions, Inc., Grand Prairie, R24936; Addicks-Alief Foot Center, Houston, R14275; Major Drive Veterinary Clinic, Beaumont, R12482.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a

public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200201020
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: GAF Materials Corporation, Dallas, L03811; Trinity Testing Laboratories, Inc., Laredo, L04190; Monitoring Services, Friendswood, L04501; Environmental Measurements Corporation, Fort Worth, L04583; Superior Testing Services, Pasadena, L05145; Cyvon Imaging, Inc., Dallas, L05320.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200201019
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Barry Brooks, D.D.S.

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 Barry Brooks, D.D.S. (registrant-R06642, revoked) of Jacksonville. A total penalty of $20,000 is proposed to be assessed to the registrant for the alleged violations of 25 Texas Administrative Code, §§289.205 and 289.232, and Texas Health and Safety Code, §401.063.

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-200201022
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Notice of Request for Proposals for Shots Across Texas/The Boots Are Back II.

Purpose

The Texas Department of Health (department), Immunization Division announces the expected availability of federal funds for fiscal year 2002 Center for Disease Control and Prevention (CDC) Section 317 Childhood Immunization Grant. This Request For Proposal (RFP) is to maintain, establish, and develop grassroots local immunization coalitions to promote and ensure accelerating interventions to the timely and appropriate immunization of children two years old and younger.

Availability of Funds

Funds provided by this RFP will be utilized in accordance with the CDC Grant-Immunization Cooperative Agreement. Up to four projects will be awarded at an amount not to exceed $25,000, based on a 12-month budget term. Funds awarded for less than a 12-month term will be prorated.

Description

Based on the compelling need to ensure that Texas children two years old and younger are fully immunized, communities should develop local projects that meet local needs and ensure the sustainability and maintenance of the momentum beyond availability of funds. The objectives are (1) to promote parental and community awareness on the importance of appropriate and timely immunizations while also encouraging vigilance of the medical community to ensure all children are up to date; and (2) to increase parental awareness and enrollment into the statewide immunization registry, ImmTrac. Doing so will improve the overall health status of both individual communities and the Texas community at large. Cooperation and collaboration in the utilization of community resources are absolutely necessary.

Eligibility

Eligible applicants are non-profit agencies and organizations. Individuals and Local Health Departments are not eligible to apply. Eligible applicants for this fund are coalitions and/or collaborations comprised of private, non-for-profit, public, and governmental entities dedicated to working cooperatively and collaboratively to increase the immunization rates of Texas children. At least one Internal Revenue Code §501(c)(3) organization must be a member of the coalition. A coalition is not required to be or become a legally incorporated organization in order to receive funding. As an alternative, a lead agency, which is incorporated, can be designated to accept funds on behalf of the coalition members. If the organization managing the funds is a not-for-profit, the organization must attach a copy of the organization's Internal Revenue Code §501(c)(3) tax-exempt status letter from the Internal Revenue Service, along with a list of the organization's Board of Directors, their addresses and occupations. Projects must be submitted by coalitions working on the local or regional level of the state. A coalition is an association of two or more agencies or organizations (although this does not imply a contractual relationship) committed to working together in

a cooperative and collaborative effort towards agreed-upon objectives. Private partnerships (such as community based organizations working with local/regional health departments), and coalitions with strong minority - group involvement and or strong target audience representation, will be given preference in the competitive process. Project proposals should be culturally competent and linguistically specific. The purpose of this requirement is to ensure a well-balanced and regionally diversified spectrum of local immunization efforts.

Limitations

Funding for the selected proposals will depend upon available federal appropriations. The department reserves the right to cancel the RFP if it is deemed in the best interest of the department.

Authority

This project is authorized under 317 of the Public Health Service Act (42 U.S.C. 247b), as amended. Regulations governing the implementation of this legislation are covered under 42 CFR Part 51b, Subparts A and B and Health and Safety Code, Chapters 81 and 161.

Funding Criteria

The department will make awards based upon an equitable distribution of funds throughout the state and competitive scores of the applications. The following criteria will be used to evaluate the applications: geographic funding allocations, compliance with application instructions, evidence of cooperative and collaborative efforts, (private/ public groups), evidence of community support (letters, matching funds, in-kind support, etc), statement of the coalitions purpose and goals, clear description of proposed activities to be funded, reasonableness of budget, evidence that the coalition is not building a new and separate system, but is enhancing the capacity of the existing healthcare network and sustainability of the coalition. Funds may not be used for: purchase of vaccine, indirect costs, out of state travel, purchase of equipment, loans to individuals, and fund raising events, including the cost of food, beverages, and entertainment.

Deadlines

All proposals to be considered for funding through this RFP must be submitted to Vivian Harris, Outreach Coordinator, Texas Department of Health, Immunization Division, Room T-310; 1100 West 49th Street, Austin Texas 78756. Proposals must be received by 5:00 p.m. Central Daylight Saving Time on March 29, 2002. Proposals received after this deadline, or via fax transmission, or E-mail will not be accepted.

Evaluation and Selection

An evaluation selection panel composed of community representatives and internal representatives designated by the department will rank and score the proposals. The evaluation will be based upon the criteria outlined in the RFP.

Obtaining RFP information

Shots Across Texas/The Boots are Back II RFP packets may be requested from Mrs. Vivian Harris, Outreach Coordinator, at the Texas Department of Health, Immunization Division, Room T-310, 1100 West 49th Street, Austin Texas 78756. Packets may also be requested by telephone by calling (512) 458-7284 or 1- 800-252-9152 or through our website: http://www.immunizetexas.com.

The RFP will not be available for distribution before March 1, 2002.

TRD-200201027

Susan Steeg
General Counsel
Texas Department of Health
Filed: February 20, 2002

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Texas Department of Housing and Community Affairs

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Eagle Glen Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Kingwood Branch Library, 4102 Rustic Woods Drive, Kingwood, Texas 77345 at 6 p.m. on March 18, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $13,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to 276HOU Eagle Glen, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: a 276-unit multifamily residential rental development to be constructed on approximately 15.7 acres of land located at 19821 Kenswick Drive in the unincorporated area of Humble, Harris County, Texas 77338. The project will be initially owned and operated by the Borrower.

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 and/or ronion@tdhca.state.tx.us.

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.

TRD-200201024
Ruth Cedillo
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: February 20, 2002

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Texas Department of Human Services

Open Solicitation for Armstrong County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Armstrong County, County #006**. Medicaid contracted nursing facility occupancy rates in **Armstrong County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **June 2001 through November 2001**. The county occupancy rates for each month of that period were: **92.1%, 90.8%, 91.4%, 92.9%, 95.0%, 92.7%**. Potential contractors seeking

to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201013
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Open Solicitation for Carson County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Carson County, County #033**. Medicaid contracted nursing facility occupancy rates in **Carson County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **June 2000 through December 2000**. The county occupancy rates for each month of that period were: **93.9%, 98.6%, 98.2%, 98.6%, 100.0%, 100.0%**. Potential contractors seeking to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201014
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Open Solicitation for Crane County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Crane County, County #052**. Medicaid contracted nursing facility occupancy rates in **Crane County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **April 2001 through September 2001**. The county occupancy rates for each month of that period were: **95.2%, 96.1%, 95.3%, 92.3%, 93.9%, 95.2%**. Potential contractors seeking to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201015
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Open Solicitation for Newton County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Newton County, County #176**. Medicaid contracted nursing facility occupancy rates in **Newton County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **June 2001 through November 2001**. The county occupancy rates for each month of that period were: **90.4%, 94.2%, 98.8%, 98.9%, 99.2%, 96.0%**. Potential contractors seeking to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201016

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Open Solicitation for Schleicher County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Schleicher County, County #207**. Medicaid contracted nursing facility occupancy rates in **Schleicher County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **January 2001 through June 2001**. The county occupancy rates for each month of that period were: **90.5%, 92.8%, 93.8%, 93.6%, 94.0%, 96.2%**. Potential contractors seeking to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201017
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Open Solicitation for Sherman County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Sherman County, County #211**. Medicaid contracted nursing facility occupancy rates in **Sherman County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **June 2001 through November 2001**. The county occupancy rates for each month of that period were: **93.6%, 96.3%, 95.9%, 96.4%, 98.6%, 99.4%**. Potential contractors seeking to contract for existing beds, which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business April 1, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200201018
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: February 20, 2002

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Travelers Indemnity Company of Connecticut proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentage of +45 for Liability and Physical Damage coverages, by territory, under all classes. The overall rate change is +11.5%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by March 15, 2002.

TRD-200200990
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 15, 2002

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Texas Natural Resource Conservation Commission

Air Quality Standard Permit for Temporary Rock Crushers

The Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing an air quality standard permit for rock crushers (RCs). The new air quality standard permit became effective February 14, 2002, and authorizes certain RCs installed on or after February 14, 2002. This standard permit is applicable to temporarily-sited RCs that process nonmetallic minerals or a combination of nonmetallic minerals and have a feed hopper throughput that is equal to or less than 250 tons per hour (tph). **Copies of the standard permit for temporary RCs may be obtained from the TNRCC website at *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/athrize.htm#603stdpmt* or by contacting the TNRCC - Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1240.**

OVERVIEW OF AIR QUALITY STANDARD PERMIT

Based on the results of a protectiveness review, the commission is issuing a standard permit for RCs under Texas Health and Safety

Code (THSC), §382.05195 and 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The commission currently authorizes RCs under the conditions of 30 TAC Chapter 106, Permits by Rule (PBR), or under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The development of this standard permit is consistent with the desire of the commission to simplify its regulatory structure and provide a standard permit as an alternative authorization to authorization by the existing PBR. The general public often expresses concern with RC registration applications. These objections often include traffic safety, noise, appearance, and property values. These concerns are beyond the commission's jurisdiction to address. The general public also expresses concerns over nuisance dust, ambient air quality, and potential negative health impacts and these issues are the focus of the RC protectiveness review and the proposed conditions of the standard permit.

The commission is including requirements to minimize dust emissions, property line distance limitations, opacity and visible emission limitations based on computer dispersion modeling, impacts analysis, and plant observations performed to verify the protectiveness of the standard permit. The commission has concluded research which shows that the standard permit for RCs is protective of the public health and welfare and that facilities which operate under the conditions specified will comply with TNRCC regulations.

The standard permit is designed to authorize RCs that are portable and, based on business needs, move to various sites. However, it is not intended to provide an authorization mechanism for all possible unit configurations or for unusual operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111, General Application or a PBR under 30 TAC §106.142.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC §116.603, the TNRCC published notice of the proposed standard permit in the November 30, 2001 issue of the *Texas Register* (26 TexReg 9978) and newspapers of the largest general circulation in the following metropolitan areas: Amarillo; Austin; Corpus Christi; Dallas; El Paso; Houston; Lower Rio Grande Valley; Lubbock; Permian Basin; San Antonio; and Tyler. The date for publication in Amarillo; Austin; Corpus Christi; Dallas; El Paso; Houston; Lubbock; Permian Basin; San Antonio; and Tyler was November 30, 2001 and the date for publication in the Lower Rio Grande Valley was December 4, 2001. The comment period closed on January 3, 2002.

COMMENTS REQUESTED

In addition to general comments concerning the standard permit for temporary RCs with a throughput of less than 250 tph, the commission solicited, in particular, comments regarding the concept of a standard permit for permanent RCs.

PUBLIC MEETINGS

Public meetings on the proposal were held on the following dates at the stated times and locations: January 3, 2002 at 7:00 p.m., TNRCC, Building C, Room 131E, 12100 Park 35 Circle, Austin, Texas; January 3, 2002 at 7:00 p.m., City of Arlington Council Chambers Municipal Building, 101 West Abram Street, Arlington, Texas; January 3, 2002 at 7:00 p.m., City of Houston Pollution Control Auditorium, 7411 Park Place Boulevard, Houston, Texas. Oral comments were provided by the following: Representative Al Edwards; Representative Ron Wilson; a representative for Representative Bill Callegari; Texas Pipe and Supply (TPS); Trinity Materials/Transit Mix (TM); Big City Crushed Concrete (BCCC); Recycled Materials (RM); representatives of the Southeast Coalition of Civic Clubs (SCCC); representatives of the Sunnyside Civic Club (SCC); representatives of Residents for a Better Community (RBC); a representative of the National Association for the Advancement of Colored People (NAACP); and three private citizens not affiliated with any of the previously mentioned organizations.

Written comments were submitted by the following: Representative Bill Callegari; Associated General Contractors of Texas (AGC); Bland/Shroeder/Archer, LP (BSA); CSA Materials, Inc. (CSA); Jenkins and Gilchrist on behalf of TXI (TXI); Recycled Materials (RM); S.H. Tolliver Company (SHTC); Texas Aggregates and Concrete Association (TACA); Westward Environmental, Inc. (WE); Frederick-Law (FL); representatives of the SCCC; and four private citizens not affiliated with any of the previously mentioned organizations.

ANALYSIS OF COMMENTS

General Comments

The commission received both positive and negative comments on the concept of a Tier III or permanent RC standard permit. Comments on the Tier III concept were solicited in order to assist in the possible development of a Tier III standard permit. The commission will continue to consider the option of a Tier III standard permit. As part of determining whether to develop a Tier III standard permit, the commission will seek additional stakeholder input. Until the commission approves a Tier III type of standard permit for RCs, the RC PBR authorized in 30 TAC §106.142 will remain in effect.

The commission also received comments which mentioned a Southern Crushed facility. Responses to timely filed comments about that facility were provided in the Executive Director's Responses to Public Comments at the beginning of January 2002. Therefore, comments about Southern Crushed will not be addressed in this response to comments on the proposed RC standard permit.

Representative Bill Callegari, Representative Al Edwards, Representative Ron Wilson, TPS, and several private citizens commented that it is important to give public notice to residents of the surrounding area when a RC is located at a specific site.

The development of a standard permit includes a comprehensive evaluation of emission controls and operating conditions for a large group of very similar facilities. Because of the similarity of emissions and operating scenarios of RCs, the commission can develop a set of emission controls and operating conditions that will apply to all individual facilities and meet the intent of the Texas Clean Air Act (TCAA). The emission controls, operating conditions, and worst-case impacts are subject to a technology requirements review that will determine whether or not the conditions of the permit are sufficient to protect public health and welfare. For example the RC standard permit review shows that Tier I would have a maximum particulate matter (PM) emission rate of 0.048 tons per year (tpy) and that Tier II would have a maximum PM emission rate of 0.672 tpy. In this standard permit the commission has also placed limits on the hours of operation, time allowed on site, amount of ancillary equipment, and types of emission controls that may exceed those in a regular permit.

THSC, §382.05195(b) requires that the commission publish newspaper notice of a proposed standard permit. Notice of this proposed standard permit was published in 11 newspapers and the *Texas Register*. Additionally, THSC, §382.05195(c) requires the commission to publish notice of, and provide a public meeting to take additional public comment on, a proposed standard permit. Three public meetings were held in Houston, Arlington, and Austin to take comments on this standard permit. A protectiveness review was performed and the commission solicited public comment on the conditions for authorization during the review of a standard permit. This standard permit has undergone a

detailed protectiveness review and public comments have been considered and responses will be published in the *Texas Register*. Only after the public participation period is concluded and any comments have been considered may the commission approve the standard permit.

Representative Al Edwards, SCCC, RBC, TPS, and private citizens commented that there needs to be more monitoring of rock and concrete crushing sites.

The commission does not typically conduct case-by-case monitoring at all specific sites. Modeling is the accepted alternative per guidance and policy of both the United States Environmental Protection Agency (EPA) and TNRCC and can simulate multiple worst-case atmospheric conditions that would not be possible with monitoring. Additionally, the models rely on emission factors that are highly conservative (worst-case) and is based on actual monitoring data developed by the EPA. In this instance, worst-case modeling indicated that these temporary facilities would meet all applicable TNRCC rules. Specifically, these operations were compared to the one-hour and three-hour 30 TAC Chapter 111 PM standard and the national ambient air quality standard (NAAQS) 24-hour and annual standard for particulate matter with a particle size of less than ten microns (PM_{10}). Additionally, modeling provides a mechanism for predicting any off-property impacts prior to an actual facility being constructed at a given location. Monitoring is typically a post construction tool to assist the agency in determining continued compliance with commission regulations.

A private citizen commented that the air quality in Houston is not good and requested a moratorium on any further permits for RCs.

The Houston/Galveston area has been designated nonattainment for the air pollutant ozone. This ozone nonattainment area is classified as Severe-17 under the Federal Clean Air Act (FCAA) Amendments of 1990 and therefore is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. The state has developed a state implementation plan which details strategies and mechanisms by which it will reduce air pollution.

This standard permit will authorize sources that emit PM_{10}. These sources do not emit ozone. The standard permit was evaluated against the NAAQS for PM_{10} on 24-hour and annual bases. These PM standards were developed to ensure protection of public health and welfare. The standard permit did not significantly impact either of these federal requirements; therefore, the commission does not anticipate that the use of this standard permit is likely to adversely impact the air quality in the Houston area or anywhere in the State of Texas.

Representative Bill Callegari, Representative Al Edwards, Representative Ron Wilson, NAACP, and RBC commented that no specific neighborhood should be targeted because of its economic or racial composition as a viable location for RCs and that RCs should not be concentrated in one general area. In addition, Representative Al Edwards, Representative Ron Wilson, NAACP, SCCC, and numerous private citizens commented that there were too many concrete crushers in the Sunnyside area.

The commission does not have statutory authority for restricting the placement of facilities based on land-use issues. However, the commission can ensure that these facilities do not contribute to adverse health impacts due to air pollution and believes that the controls, limits, and restrictions in this standard permit achieve that goal. Additionally, the new THSC, §382.065 prohibits the location of this type of facility within 440 yards of a building used as a single or multifamily residence, school, or place of worship. The TNRCC has no guidance addressing how environmental equity is to be considered in the permitting process. Air quality permits evaluated by the agency are reviewed without any particular knowledge of, or reference to, the socioeconomic or racial status of the surrounding community. Although there are no TNRCC rules addressing environmental equity issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low- income populations, or the disparate economic, environmental, and health effects on minority and low-income populations, the TNRCC has made a strong policy commitment to address environmental equity by creating an environmental equity program within the Office of Public Assistance. This program works to help citizens and neighborhood groups participate in the regulatory process, to ensure that agency programs that substantially affect human health or the environment operate without discrimination, and to make sure that citizens' concerns are considered thoroughly and handled in a way that is fair to all. The Office of Public Assistance can be reached at 1-800-687-4040 for further information.

A private citizen suggested enclosing the RC and associated equipment in a building and Representative Al Edwards stated that such an enclosure should be seriously considered.

After detailed analysis including refined air dispersion modeling, the commission believes that the controls, such as spray bars, screen enclosures, and conveyor covers, and best management practices, such as watering roads and stockpiles, in this standard permit ensure that emissions meet the property line standards and NAAQS for PM and are thus protective of public health and welfare. Additional controls such as a complete enclosure are not required to reduce emissions below the previously stated standards. Additionally, these types of requirements are technically impractical and economically unreasonable given the temporary nature of the types of facilities that are authorized by this standard permit.

RCCC and several private citizens commented that the dust from RCs will cause adverse health effects.

The standard permit underwent a detailed protectiveness review and the permit provisions were developed to prevent any adverse health effects associated with the air emissions from temporary RCs. Assuming the RCs authorized by this standard permit operate according to the provisions of the permit, the commission would not expect adverse health effects to result from exposure to authorized emissions.

SCCC, SCC, and private citizens commented that they are opposed to the RC standard permit.

The commission acknowledges the opposition to the proposed standard permit but believes the standard permit is protective and is a practical method to authorize operations of this nature.

SCCC, TPS, and private citizens commented that the concentration of concrete crushers in the neighborhood lowered property values. A private citizen also stated that the diminished quality of life, due to air pollution, lowered the City of Houston's bond rating.

The commission has no statutory authority for consideration of the effect of this standard permit on property values or other land use issues. Similarly, the commission has no statutory authority to consider a city's bond rating in the process of approving a standard permit or approving individual authorizations. Moreover, THSC, §382.065, as passed by the 77th Legislature as a part of House Bill 2912, prohibits the location or operation of a concrete crushing facility within 440 yards of a building used as a single or multifamily residence, school, or place of worship.

BCCC stated that the concrete crushing industry has developed differently in Dallas because of the more stringent land-use regulations and suggested that regional or local entities should have the authority to approve concrete crusher sites.

Land-use planning and zoning are handled by local jurisdictions such as cities. TNRCC has no authority to consider land-use planning in the

development of the standard permit. Nor does TNRCC's authorization of a facility supercede local authority to restrict or limit land use.

BSA suggested that portable RCs with a capacity of 250 tph or less be treated the same as other construction equipment, exempt from permitting but subject to TNRCC dust control regulations.

Facility is defined as a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment (THSC, §382.003(6), 30 TAC §116.10(4)). 30 TAC §116.110 states that new facilities or facilities being modified are subject to the requirements of 30 TAC Chapter 116. RCs, even though portable, are considered to be stationary sources because they are fixed (do not move) while operating. A RC, regardless of size, is a facility and is therefore subject to 30 TAC Chapter 116 or 106 authorization requirements. Other types of construction equipment that are considered mobile sources do not fit this definition and are not subject 30 TAC Chapter 116 permitting requirements.

CSA commented that the location, production, emissions, and equipment requirements of the proposed standard permit for RCs are not practical, necessary, or economically feasible for most RCs operating in rural areas. RCs in rural areas are often located miles from the nearest receptor and requirements based on crowded urban areas will adversely affect RCs operating in rural areas of the state and some RCs may be forced to shut down. BSA and CSA commented that if aggregate cannot be crushed on site then the aggregate must be hauled to the site with resultant increases in air pollution from trucks and wear on roads and highways.

The standard permit is designed to allow for authorization of RCs that are portable and, based on business needs, move to various sites. However, it is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142. The property line limit of the standard permit is used in lieu of off-property receptor limitations as required by a case-by- case permit review to ensure that the operating facility is in compliance with all TNRCC rules and regulations.

AGC, CSA, TACA, WE, and TXI objected to or expressed concern about eliminating the PBR for rock crushing (30 TAC §106.142).

Based upon these comments, the commission amended the proposed standard permit to allow use of the PBR for RCs (30 TAC §106.142).

TXI and RM requested an extension of the comment period. TXI was also concerned about the lack of stakeholder involvement and AGC requested a formal stakeholder meeting.

The commission provided several opportunities for public comment. The proposed RC standard permit was made available on the commission's public website and was published in the *Texas Register* on November 30, 2001. Comments were accepted during the formal comment period and at three public hearings. The three public hearings were conducted in various areas of the state (Houston, Austin, and Arlington) on January 3, 2002. Therefore, the commission is not extending the comment period nor holding a formal stakeholder meeting.

FL requested an explanation of the 40% reduction in modeled impacts to account for meander of the plume. FL stated that because the five-year meteorological data are already one-hour averages of wind speed and direction aggregated from much more short-term readings, plume meander would have been accounted for in the model data.

The meteorological data for input into the industrial source complex (ISC) model is based on National Weather Service (NWS) observations. These observations take place once per hour and are not one-hour averages. The NWS records wind speeds to the nearest knot and wind direction to the nearest ten degrees of angle.

The ISC model accounts for variations in the wind speed and direction during a modeled hour by use of dispersion coefficients. These coefficients are partially based on a set of field studies. The dispersion coefficients resulting from the field studies were based on averaging times much less than one hour, as short as three minutes. The ISC model has incorporated these dispersion coefficient values for one-hour periods by use of the assumption that each three-minute period is the same as the next. This assumption would lead to gross overestimation of predicted concentrations.

The TNRCC has recognized the disparity in dispersion coefficients for some time, and has decided to mitigate overly conservative model results. To do so, a conversion from three-minute averages to one-hour averages was performed. The use of this conversion from one averaging time to another results in the 40% reduction of one-hour predictions.

The TNRCC modeling staff are applying this factor only to low-level intermittent fugitive sources (sources with little or no vertical momentum or buoyancy) at this time.

FL commented that the 1996 protectiveness review of the RC PBR found that it was not protective of the public without a 1/4-mile buffer from the property lines.

The 1996 protectiveness review determined that a distance of 1/4 mile from the facility rather than the required distance of 1/2 mile as listed in the current 30 TAC §106.142 would be acceptable to meet 30 TAC §111.155 standards. Though the 1996 protectiveness review scenario had a smaller hourly maximum production/process rate, this scenario represented more equipment (screens) and load-out points on the crusher, larger stockpiles, larger plant footprint, and no emission controls on the crusher screens or conveyers other than water. In addition, the staff did not use any mitigating factors for the 1996 review to account for the overly conservative assumptions used in the modeling demonstration. These differences account for the 1996 scenario predicted concentrations being higher with a corresponding greater distance to demonstrate compliance than for the 2001 scenario. The requirement of additional emission controls in the standard permit is the largest factor in the reduction of the buffer size from the 1996 review. Additionally this standard permit allows no visible emissions to leave the property.

FL commented that the protectiveness review should have included haul-road and blasting particulate emissions in the modeling. FL also noted that these are large sources of contaminants that are subject to the 30 TAC Chapter 111 property line standard.

All sources of contaminants directly associated with rock crushing facilities were evaluated for this protectiveness review, though they were not necessarily evaluated through dispersion modeling. Emissions from haul roads and blasting are intermittent and not easily quantified on a short-term basis, therefore, it would not be appropriate to model the estimated emissions on a continuous basis.

Emissions from haul roads and in-plant work areas are minimized by implementation of best management practices in the standard permit. If roads are maintained according to the provisions of the standard permit, emissions from these sources will be minimized. Additionally, no visible emissions are allowed to leave the site under this standard permit.

Blasting and associated equipment are not facilities which require a permit or other authorization. However, emissions from blasting are

subject to 30 TAC Chapter 111. Due to the short-term duration of blasting emissions, the commission does not expect 30 TAC Chapter 111 standards to be exceeded.

BCCC commented that the commission based the protectiveness review on rock crushing plants and that concrete crushing is significantly different than rock crushing because in concrete crushing there less of the material processed was wasted.

The commission developed this standard permit to address a broad range of conditions and operating scenarios. Consequently, the commission established requirements based on those conditions that were most likely to result in emissions that would exceed property line standards in 30 TAC Chapter 111 or NAAQS.

Comments on General Requirements

TACA agreed with the definition of a "site" as a means to deter RCs from circumventing operating time restrictions.

The commission acknowledges the comment and believes that the term will help assure compliance.

TACA and TXI objected to the requirement to locate all concrete crushers and associated sources at least 440 yards from any school, church, or residence because it adversely affects the ability for portable facilities to be sited for recycling projects.

THSC, §382.065, as passed by the 77th Legislature as a part of House Bill 2912, prohibits the location or operation of a concrete crushing facility within 440 yards of a building used as a single or multifamily residence, school, or place of worship. The statute provides no exceptions for recycling projects.

AGC and WE objected to the requirement that no visible emissions leave the property from roads associated with the RC operation because emissions from roads are subject to the nuisance requirements in 30 TAC Chapter 101, General Air Quality Rules. WE commented that visible emissions should not be limited to 30 seconds.

Performance demonstrations from sources of emissions such as roads and plant work areas are needed to ensure compliance with the conditions of the standard permit and the prevention of nuisance conditions. Visible emission limitations and opacity requirements ensure that both the operators and TNRCC field investigators can clearly understand how to demonstrate compliance with the rules and regulations of the commission. Further, tools do not exist to accurately calculate emissions from roads. Rather, it has been agency practice to ensure that emissions from sources that cannot be accurately calculated are controlled or eliminated using best management practices. Lack of visible emissions is evidence of the effectiveness of those practices. Based on engineering judgement and wide experience with these types of facilities, the commission believes that the 30-second period should allow for normal equipment operation, while ensuring proper abatement performance. Finally, minimization of emissions also serves to minimize the potential for adverse health, welfare, and nuisance effects. This is consistent with NSR permitting requirements, was included in the Concrete Batch Plant Standard Permit and meets the threshold of best available control technology which is required for a standard permit.

TACA supported the requirement for permanently mounted spray bars at all shaker screens and transfer points. However, TACA expressed concern that this might make all portable facilities wet rock crushing operations and suggests substituting the term "misting mechanism" for "spray bar."

The commission intends water to be used to minimize visible emissions and not to alter the actual operations of RCs. The term "spray bar" has been commonly used by the TNRCC and is understood by the commission and the regulated community to be a dust suppression mechanism associated with RCs.

AGC expressed the belief that permanently mounted spray bars at the shaker screens and material transfer points are unnecessary because material will be controlled at the inlet and outlet of the crusher.

Spray bars are an accepted method of minimizing emissions from these types of sources. Although under certain conditions spray bars at these points may not be necessary, the standard permit is intended to cover a broad range of facility configurations and operating conditions. In order to ensure compliance with all TNRCC regulations and to protect public health and welfare the commission believes that it is important to maintain the requirement to have spray bars at all screens and material transfer points.

AGC and WE commented that the stockpile height requirement was too restrictive. Representative Al Edwards and TPS commented that the stockpile heights were too high for areas adjacent to residential housing, schools, and churches.

No changes have been made to the standard permit in response to these comments. The protectiveness review indicates that the conditions of this standard permit, including stockpile height, are protective and will help ensure compliance with state and federal regulations. The commission has no statutory authority to reduce or increase the stockpile heights based on any consideration other than to protect public health and welfare and ensure compliance with applicable regulations. However, local governmental entities may impose more restrictive limits based on land-use considerations such as aesthetics.

AGC and WE objected to the requirement for a runtime meter.

The temporary nature of the operation of a RC is integral to authorization of a facility by this standard permit and it is imperative that an accurate accounting of the time spent in operation be kept according to paragraph (1)(K)(i). A runtime meter provides a method by which the owner/operator may ensure an accurate record is being maintained of the time a RC is in operation.

WE commented that the written records required by the standard permit should not be required to follow the crusher from site to site as the limitations of the proposed standard permit are site-specific.

Consistent with the requirements in 30 TAC §116.115(F)(ii) and 30 TAC §116.115(F)(v), records are required to be kept with the RC at any site it occupies and maintained for a rolling 24-month period. The commission may need access to records in order to determine compliance with the emission limitations (production, etc.) after a crusher has left a specific site. Also, the standard permit limits the time that a crusher may be at a specific site within a one-year time frame; therefore, records must follow the crusher in order for the commission to determine if the crusher was previously located at a site and how long it was there.

TXI objected to the exclusion of crushing quartz and sandstone even in a completely wet process such as a sand and gravel operation.

The commission has revised the standard permit based on this comment. Based on additional protectiveness review of inhalable silica from quartz and sandstone under the conditions of the standard permit, both materials will be authorized under this standard permit. This analysis of these materials indicates that there will not be any adverse health effects from respirable silica associated with the crushing of these materials.

AGC, TXI, TACA, and WE objected to the requirement that RCs operating under this standard permit shall not locate or operate on the same

site as another RC. TXI and AGC asked for the scientific basis for this requirement.

The purpose of this standard permit is to authorize a single RC and modeling was based on that scenario. Further, the crushers are designed to be temporary sources for use at construction sites, subdivision developments, and road and highway projects, where multiple crushing operations do not occur simultaneously. The prohibition against locating at a site with another crusher is needed to show compliance with all TNRCC regulations and to ensure protection of public health and welfare.

Comments on Tier I Rock Crushers

TXI and WE objected to the requirement that a Tier I RC not be located at a quarry or a mine. TXI and TACA requested that the TNRCC provide the basis for this requirement.

This tier of the standard permit is intended for temporary locations (e.g., construction sites) and for those locations where there is little possibility of multiple operations occurring at the same time. Facilities that do not meet the requirements of Tier I of this standard permit may be authorized under Tier II, under a PBR (30 TAC §106.142) or by obtaining a regular air quality permit under 30 TAC Chapter 116.

AGC and TACA commented that due to production limitations and time restrictions Tier I has limited applicability for industry.

The standard permit is designed to allow for authorization of RCs that are portable and, based on business needs, move to various sites and operate at any one site for a short period of time. However, it is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142.

AGC, SHTC, TACA, and WE commented that Tier I limitations should be based on emissions rather than throughput.

Particulate emissions from a RC are closely related to throughput. It is the commission's intention to use throughput as a surrogate for actual emissions in order to provide industry with an effective method of demonstrating compliance with the provisions of the standard permit.

AGC and TACA commented that the 125 tph limit should be based on crusher capacity rather than process throughput at the feed hopper because a significant portion of the material from the feed hopper is screened out before it reaches the crusher. TXI suggested that the 125 tph limit be based on material production rather than feed hopper throughput. RM suggested that the hourly rate be an average over several production days.

The 125 tph limit is based on total facility capacity rather than material production or crusher capacity because this includes quantification of emissions from all sources. This would include emissions from all hoppers, screens, crushers, and conveyors. The commission selected the total facility capacity scenario rather than those listed previously because total facility capacity and all associated sources represents the worst-case scenario, i.e., all material fed into the system is crushed. The authorized hourly production rate of 125 tph is necessary in order to ensure compliance with 30 TAC Chapter 111 one- and three-hour standards.

AGC commented that associated facilities should not be limited to placement at least 200 feet from the nearest property line and gave the example of a road. Representative Edwards and Representative Callegari commented that the distance limitation was too short.

Property line distance limitations are used instead of off-property receptor distance limitations to protect public health and welfare, and to ensure that the operating facility is in compliance with all TNRCC regulations, particularly the property line standards in 30 TAC Chapter 111. The protectiveness review indicated that the 200-foot distance limitation from the property line ensures that RCs meet TNRCC regulations and protect public health and welfare. Roads are not facilities under THSC and are not subject to the distance requirement. However, they are sources of emissions and are controlled by best management practices such as watering and are prohibited from emitting visible emissions that cross the property line.

AGC and TACA commented that the requirement to fully enclose screen sides and conveyors is not practical because it will make the conveyors more difficult to move. AGC and TXI also stated that fully enclosed screen sides and conveyors were not necessary due to the minimal emissions from these facilities and asked what the scientific basis for this requirement was. AGC and WE stated that the commission should not dictate the type of equipment used to control emissions. TM requested that the commission clarify the meaning of enclosed conveyor and said that different conveyor manufacturers had indicated that in other states they put a half-moon cover over the top of the conveyor.

In order to minimize property line distance requirements, while being protective of public health and ensuring that the facility is in compliance with TNRCC regulations, the commission modeled emissions from facilities with enclosed screens and conveyors. The commission has clarified the requirement for enclosed conveyors to mean a cover that fits over the top of the conveyor. Also, because there was an identical requirement in the Tier II requirements, the commission removed this requirement from Tier I and Tier II and added it to the General Requirements of the standard permit.

AGC objected to the requirement that Tier I RCs be restricted to one primary crusher, two conveyors, and two screens because the type of job and nature of the required product might require more equipment.

In order to minimize property line distance requirements, while being protective of public health and ensuring that the facility is in compliance with TNRCC regulations, the commission modeled emissions on a prescribed amount of equipment based on what was expected at the majority of temporary RC sites. If Tier I requirements cannot be met, the facility has the option of meeting Tier II or obtaining a permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142.

AGC, TXI, TACA, and WE objected to the requirement that RCs authorized by this standard permit not locate or operate on a site with an asphalt or concrete batch plant. WE and TACA commented that the restriction against collocation with a concrete or asphalt plant prevents recycling of aggregate materials at these plants. AGC and TXI requested the scientific basis for this determination.

The purpose of this standard permit is to authorize a single RC and the protectiveness review was based on that scenario. Tier I of the standard permit is intended for those types of locations (e.g., construction sites) that are not permanent aggregate handling operations and for those locations where there is little possibility of multiple operations occurring at the same time. The commission intended for no cumulative effects to occur at Tier I locations. Tier II may be used at these types of sites where all the requirements of Tier II are met.

AGC commented that limiting the time on site for RCs located in urban/suburban areas is reasonable but makes little sense in sparsely populated areas and that many highway projects require more time and would make the standard permit unusable for those situations. WE commented that project delays and change orders could cause the RC to run out of time before finishing a job. AGC and WE added that 24 hours was not a sufficient amount of time to disassemble equipment and move out.

The commission intends for the standard permit to cover a broad range of facility configurations and operating conditions for temporary RCs. It is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142. Further, the commission anticipates that, for the types of facilities intended to be authorized by this standard permit (which is highly portable), 24 hours is an adequate amount of time disassemble the equipment and move offsite.

AGC and WE commented that the 365-day period before relocating to the site is too long.

The commission developed the standard permit for temporarily-sited RCs. It is designed to allow for authorization of RCs that are portable and, based on business needs, move to various sites. Tier I of the standard permit is intended for those types of projects (e.g., construction sites, subdivision developments, roads and highways) that do not require permanent aggregate handling operations and for those locations where there is little possibility of the necessity for rock crushing to occur at the site again. However, in the unlikely event that additional crushing operations are needed at a site that has already been occupied, the 365-day minimum time frame still allows for a crusher to return that site.

AGC stated that the time on site and operation time restrictions did not take into account factors beyond the owner's/operator's control such as machinery downtime, weather, phased projects, and engineer change orders.

During the development of the standard permit, the factors listed in the previous paragraph were taken into consideration. As a result, the site time was increased from 20 days to 45 days for Tier I, and from 60 days to 180 days for Tier II.

Comments on Tier II Rock Crushers

AGC and TACA commented that due to production limitations and time restrictions Tier II has limited applicability for industry.

The standard permit is designed to allow for authorization of RCs that are portable and, based on business needs, move to various sites. However, it is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142.

AGC and TACA commented that the 250 tph limit should be based crusher capacity rather than process throughput at the feed hopper because a significant portion of the material from the feed hopper is screened out before it reaches the crusher. TXI and WE suggested that the 250 tph limit be based on material production rather than feed hopper throughput. AGC, TACA, and SHTC suggested that restrictions should be based on emissions rather than throughput. SHTC requested the basis for the 250 tph restriction. RM suggested that the hourly rate be an average over several production days.

The 250 tph limit is based on total facility capacity rather than material production or crusher capacity because this includes quantification of emissions from all sources. This would include emissions from all hoppers, screens, crushers, and conveyors. The commission selected the total facility capacity scenario rather than those listed in the previous paragraph because total facility capacity and all associated sources represents the worst-case scenario, i.e., all material fed into the system is crushed. The authorized hourly production rate of 250 tph is necessary in order to ensure compliance with 30 TAC Chapter 111 one- and three-hour standards.

AGC commented that the distance limitation of 300 feet from the nearest property line is reasonable in urban/suburban areas but makes little sense in sparsely populated areas and that many highway projects will not be able to meet the 300-foot limit and the standard permit will be unusable for those situations. TXI, BCCC, and WE commented that the 300-foot limitation will preclude the use of temporary RCs at many sites and suggested restricting the distance to 300 feet to an off property receptor rather than 300 feet to the property line. TACA added that the 300-foot setback distance is not based on any scientific modeling data and questioned the basis for this restriction. Representative Callegari and FL commented that the 300-foot distance is too short.

Property line distance limitations are used instead of off-property receptor distance limitations to protect public health and welfare, and to ensure that the operating facility is in compliance with all TNRCC regulations, particularly the property line standards in 30 TAC Chapter 111. The protectiveness review indicated that the 300-foot distance limitation from the property line ensures that RCs meet TNRCC regulations and protect public health and welfare. Roads are not facilities under THSC and are not subject to the distance requirement. However, they are sources of emissions and are controlled by best management practices such as watering and are prohibited from emitting visible emissions that cross the property line.

The commission intends for the standard permit to cover a broad range of facility configurations and operating conditions for temporary RCs. However, the standard permit is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios.

The state property line standards for PM are the controlling standards for the distance limitations. To demonstrate compliance, the modeling team tabulated the total number of modeled exceedances of the one-hour and three-hour standards over a five-year period that occurred over each tier's receptor grid. The compliance prediction was based on an evaluation of the total hours of modeled exceedances divided by the total hours in the applicable review period (43,824 hours for the one-hour standard and 14,608 hours for the three-hour standard) and the conservative nature of assumptions made in the review. For each source configuration, the maximum distance to obtain 99.9% predicted compliance was used as the basis for the distance limitation for each tier. Given the conservative nature of the modeling and limited hours of operation, the team expects a predicted compliance of 99.9% to be 100% compliance in practice. In addition, the NAAQS for PM_{10} should not be exceeded based on the results of the one-hour and three-hour analyses, limited hours of operation, and lower emission rates for each tier.

AGC, TXI, TACA, and WE objected to the requirement that a RC be located at least 550 feet from a concrete or asphalt batch plant. TACA and TXI stated that due to operations restriction on batch plants and local ordinances that may prohibit nighttime operation of a RC, the standard permit provision that allows operation of a RC that cannot meet the 550-foot requirement when the concrete or asphalt plant is not operating is impractical. AGC, SHTC, and WE added that RCs are often used to produce aggregate for asphalt plants and are often located less than 550 feet from the asphalt plant and that having the crusher separated from the asphalt plant will increase emissions from unpaved roads and result in increased traffic and haul truck emissions due to the need to bring aggregate from off site.

The 550-foot distance requirement is necessary to offset the cumulative emissions of multiple facilities operating simultaneously and to ensure compliance with the TNRCC regulations and protect public health. Additionally, this standard permit was developed to address a broad range of operating conditions and does not take into account local ordinances that might preclude its use in certain situations.

AGC, BCCC, and TACA commented that the requirement to fully enclose screen sides and conveyors is not practical because it will make the conveyors more difficult to move. AGC and TXI also stated that fully enclosed screen sides and conveyors are not necessary due to the minimal emissions from these facilities and asked what the scientific basis for this requirement is. AGC and WE stated that the commission should not dictate the type of equipment used to control emissions. TM requested that the commission clarify the meaning of enclosed conveyor and said that different conveyor manufacturers had indicated that in other states they put a half-moon cover over the top of the conveyor.

In order to protect public health and welfare and ensure compliance with TNRCC regulations and NAAQS, this standard permit underwent a detailed protectiveness review that took into account emission reductions from the use of enclosed screens and conveyors. The commission has clarified the requirement for enclosed conveyors to mean a cover that fits over the top of the conveyor. Also, because there was an identical requirement in the Tier I requirements, the commission removed this requirement from Tier I and Tier II and added it to the General Requirements of the standard permit.

AGC objected to the requirement that Tier II RCs be restricted to one primary crusher, one secondary crusher, and two screens because type of job and nature of the required product might require more equipment.

In order to provide owners/operators with as short a property line distance requirement as possible while being protective of public health and ensuring that the facility is in compliance with TNRCC regulations, the commission modeled emissions based on a prescribed amount of equipment based on what was expected at the majority of temporary RC sites. If Tier II requirements cannot be met, the facility has the option of obtaining a permit under 30 TAC §116.111 or a PBR under 30 TAC §106.142.

AGC commented that the time onsite limitations are reasonable for RCs located in urban/suburban areas but that many highway projects require more time and the time limit will make the standard permit unusable for those situations. They added that 24 hours is not a sufficient amount of time to disassemble equipment and move out. BCCC stated that although the time limitations would not have been exceeded in any of their previous projects, they are concerned that the time limits might preclude long term projects. SHTC requested justification for the onsite time limitations. WE commented that the time restrictions limits their ability to bid certain projects.

The standard permit is designed to allow for authorization of RCs that are portable and, based on business needs, move to various sites. However, it is not intended to provide an authorization mechanism for all possible unit configurations or operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under 30 TAC §116.111.

AGC, SHTC, and WE commented that the 365-day period before relocating to the site is too long.

The commission developed the standard permit for temporarily-sited RCs. It is designed to authorize RCs that are portable and, based on business needs, move to various sites. Tier II of the standard permit expands the types of sites that a crusher may occupy (specifically, Tier II adds quarries and mines). However, Tier II, like Tier I, is intended for those types of projects (e.g., construction sites, subdivision developments, roads and highways) that do not require permanent aggregate handling operations and for those locations where there is little possibility of the necessity for rock crushing to occur at the site again. However, in the unlikely event that additional crushing operations are needed at a site that has already been occupied, the 365-day minimum time frame still allows for a crusher to return that site.

AGC, BCCC, and WE requested that the TNRCC (regional office) respond to a notification of intent to locate a Tier II RC within 30 days.

Subchapter F of Chapter 116 requires the agency to respond to all standard permit applications within 45 days or as soon as practical. The commission intends to continue with this practice.

TRD-200201004
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 19, 2002

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Invitation to Comment - Draft January 2002 Update to the Water Quality Management Plan for the State of Texas

The Texas Natural Resource Conservation Commission (TNRCC or commission) announces the availability of the draft "January 2002 Update to the Water Quality Management Plan for the State of Texas" (draft January 2002 WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act (CWA), Chapter 208. The draft January 2002 WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft January 2002 WQMP update also contains service area populations for listed wastewater treatment facilities, and designated management agency information.

A copy of the draft January 2002 WQMP update may be found on the commission's web page located at *http://www.tnrcc.state.tx.us/water/quality/wqmp*. A copy of the draft may also be viewed at the TNRCC Library located at Texas Natural Resource Conservation Commission, Building A, 12100 Park 35 Circle, North Interstate 35, Austin, Texas.

Written comments may be submitted to Ms. Suzanne Vargas, TNRCC, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on April 1, 2002. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by e-mail at *svargas@tnrcc.state.tx.us*.

TRD-200201012
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 20, 2002

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the

proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 1, 2002**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 1, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Janet Amidon; DOCKET NUMBER: 2001-0297-WTR-E; TNRCC ID NUMBER: 465-19-0219; LOCATION: ten miles east of Marble Falls on Farm and Market 1431, Burnet County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f), by failing to maintain operating records and reports; 30 TAC §290.46(j), by failing to document customer service inspections; 30 TAC §290.46(r), by failing to maintain minimum pressure throughout the distribution system; 30 TAC §290.117(c), by failing to complete initial tap sampling for lead and copper analysis; 30 TAC §290.117(g), by failing to conduct public education; 30 TAC §290.117(f), by failing to conduct water quality parameter monitoring; 30 TAC §290.117(h)(3), by failing to submit corrosion control study; PENALTY: $0; license revocation; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Suite. 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Jose G. Quintanilla dba San Perlita Food Store; DOCKET NUMBER: 2000- 0821-PST-E; TNRCC ID NUMBER: 26904; LOCATION: northeast corner of 9th and FM 2209 and Campbell Street, San Perlita, Willacy County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A), and (b)(2), and TWC, §26.3475, by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank system and by failing to perform tightness testing on pressurized, suction and/or gravity piping; 30 TAC §334.93(a), and (b), by failing to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily and property damage caused by accidental releases; 30 TAC §334.7(d)(3), and §334.10(b)(1)(A), by failing to amend, change or update the registration information; PENALTY: $4,500; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Ave., Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Tajuddin Jiwani dba Quick & Easy No. 2; DOCKET NUMBER: 2001-0624- PWS-E; TNRCC ID NUMBER: 2410044; LOCATION: 4014 Highway 59, Wharton Loop North, Wharton, Wharton County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(e) and §290.41(c)(3)(O), by failing to enclose the pressure maintenance facilities and the well unit with an intruder resistant fence with lockable gates or a locked ventilated house; 30 TAC §290.44(a)(1), by failing to provide pipes and related products that conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and are certified by an organization accredited by ANSI; 30 TAC §290.110(d)(3) and §290.110(c)(5)(B), by failing to test the disinfectant residual at representative locations in the distribution system at least once every seven days and by failing to possess a diethyl-p-phenylendiamine method chlorine test kit to determine if the free chlorine residual was adequate; 30 TAC §290.41(c)(1)(F), by failing to secure a sanity control easement for the well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow meter on the well pump discharge line; PENALTY: $1,313; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200200999
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 19, 2002

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 1, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 1, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: B.C.R. Inc., dba Chevron Country Food Mart; DOCKET NUMBER: 2000- 0400-PST-E; TNRCC ID NUMBER: 29962; LOCATION: 525 Ranch Road 1431, Kingsland, Llano County, Texas; TYPE OF FACILITY: gasoline station; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475, by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system; 30 TAC §334.48(c), by failing to conduct inventory control procedures in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; 30 TAC §37.801, by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injuries and property damage that result from accidental releases; 30 TAC §334.49(a), and TWC, §26.3475, by failing to provide corrosion protection for its UST systems; 30 TAC §334.7(d)(1)(G), by failing to amend its registration to reflect the addition of spill and overflow prevention equipment and line leak detectors; PENALTY: $15,000; STAFF ATTORNEY: Rebecca Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Suite. 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Mayfield McCraw dba McCraw Materials; DOCKET NUMBER: 2000-1343- AIR-E; TNRCC ID NUMBER: FB-0067-E; LOCATION: Route 1, Box 192, Riverview Road, on northwest side of County Road 2135, four miles northeast, Telephone, Fannin County, Texas; TYPE OF FACILITY: sand and gravel production plant; RULES VIOLATED: 30 TAC §116.110(a), and Texas Health and Safety Code (THSC), §382.085(b), and §382.0518(a), by constructing and operating a sand and gravel operation without obtaining a required permit; TWC, §26.121, by failing to prevent an unauthorized discharge of used oil from a water pump onto the river bank and into the Red River; PENALTY: $6,500; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 535-5100; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Proton PRC, Inc. dba Crossroads Mercantile and Twinstop #2; DOCKET NUMBERS: 1999-0846-PST-E and 1999-1372-PST-E; TNRCC ID NUMBERS: 29501 and 51106; LOCATION: highway 59, Henderson County, Texas and highway 31, Henderson County, Texas; TYPE OF FACILITY: retail for the sale of motor fuels an lubricants; RULES VIOLATED: 30 TAC 334.7(d)(3), by failing to provide an amended registration for changes in ownership within 30 days from the date of the occurrence; 30 TAC §334.49(a), and TWC, §26.3475, by failing to have corrosion protection; 30 TAC §334.51(b)(2)(B), and TWC, §26.3475, by failing to equip the fill tubes of the tanks with an attached spill container or catchment basin, or enclose them in a liquid-tight manway, riser or sump; 30 TAC §334.72, by failing to report to the commission a suspected release within 24 hours of its discovery; 30 TAC §334.74, by failing to conduct release investigation and confirmation steps within 30 days of discovery; 30 TAC §334.127(a)(1), by failing to register with the commission; 30 TAC §334.129(a), by failing as owner to report and investigate a suspected or confirmed release of a petroleum product; 30 TAC §327.3(b), and TWC, §26.039(b), by failing to notify the commission within 24 hours of discovery of a reportable spill event of a petroleum product; 30 TAC §327.5(a), and TWC, §26.121, by failing to immediately abate and contain a spill of an estimated 900 gallons of gasoline and diesel; 30 TAC §334.127(d), by failing to provide notification of changes in ownership and the operational status within 30 days from the date of the occurrence; PENALTY: $17,650; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Sunesara Investment, Inc.; DOCKET NUMBER: 2001-0358-PST-E; TNRCC ID NUMBER: 0063601; LOCATION: 2900 Market Street, Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2), and THSC, §382.085(b), by failing to successfully perform annual pressure decay testing; 30 TAC §37.875(a), by failing to maintain evidence of all financial mechanisms used to demonstrate financial responsibility; 30 TAC §334.50(d)(4)(A)(i), and TWC, §26.3475(c)(1), by failing to conduct inventory volume measurements as required in conjunction with automatic tank gauging; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; 30 TAC §334.22(a), by failing to pay outstanding UST fees; PENALTY: $8,750; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Tandem Energy Corporation; DOCKET NUMBER: 2000-1263-AIR-E; TNRCC ID NUMBER: HG-0230-U; LOCATION: 2.4 miles from downtown Tomball off Farm-to-Market Road (FM) Road 249, Harris County, Texas; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.10, and THSC, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $3,125; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Young Brothers, Inc.; DOCKET NUMBER: 1999-1533-AIR-E; TNRCC ID NUMBER: 24539; LOCATION: 2001 Marlin Highway 6, Waco, McClennan County, Texas; TYPE OF FACILITY: asphaltic concrete manufacturing; RULES VIOLATED: 30 TAC §116.115(b)(F)(i), and THSC, §382.085(b), and TNRCC Air Quality Permit Number 24539, Special Condition Number 10, by failing to maintain sufficient asphalt mix temperature data to adequately demonstrate compliance with the permit limitation; 30 TAC §116.115(c), THSC, §382.085(b), and TNRCC Air Quality Permit Number 24539, Special Condition Number 10, by failing to maintain asphalt mix temperature at or below the maximum permit limit; 30 TAC §116.115(c), THSC, §382.085(b), 40 CFR §§60.8(a) and (b), and TNRCC Air Quality Permit Number 24539, Special Condition Number 30A, by failing to submit testing notifications and conduct emissions testing within the required time limitations; PENALTY: $8,000; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Ave., Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200201000
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 19, 2002

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Notice of Public Hearing

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct public hearings to receive testimony concerning the proposed amendments to 30 TAC Chapter 213, Edwards Aquifer.

This rulemaking proposes to provide for a 30-day comment period to comply with requirements under House Bill (HB) 2912 and a 90-day

executive director review period for contributing zone plans under Subchapter B. Currently, approval is automatic on the 16th day if program staff does not issue a letter approving or denying the application within 15 days. The statute does not require the commission to eliminate the 16-day automatic approval. However, program staff believes that the 16-day automatic approval, following the 30-day comment period, would not allow adequate time for further review by program staff or additional work that may be required by the applicant's consultants to address comments received. This proposed change will make the review time for the contributing zone plans under Subchapter B consistent with the review time for the Edwards Aquifer protection plans under Subchapter A. Also, this rulemaking proposes to change the language in §213.23(e)(2) and add it to proposed §213.23(e). The denial language is currently included to provide the executive director a way to deny, within 15 days, an application submitted for the contributing zone. However, if the automatic approval language is deleted the denial language is no longer needed, because the proposed changes would not allow construction in the contributing zone to begin until the agency issues an approval letter.

The commission will hold public hearings on this proposal in San Antonio on March 20, 2002 at 7:00 p.m., in the City Council Chambers located in the Municipal Plaza Building, 103 Main Plaza as well as in Austin on April 3, 2002 at 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and answer questions before and after the hearings.

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-086-213-WT. Comments must be received by 5:00 p.m., April 15, 2002. This proposal is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html*. For further information, please contact Kathy Ramirez, Regulation Development Section, at (512) 239-6757.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200200933
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 14, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 111

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 111 under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed amendment to Chapter 111, concerning Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter B, Outdoor Burning, §111.209, Exception for Disposal Fires, provides an additional exception to the prohibition of outdoor burning for the burning of animal remains by a veterinarian if the burning is conducted on property owned by the veterinarian; the property is in a county with a population of less than 10,000; and the veterinarian does not charge for the burning.

A public hearing on this proposal will be held in Austin on March 28, 2002 at 2:00 p.m. at the TNRCC Complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-088-111-AI. Comments must be received by 5:00 p.m., April 1, 2002. For further information, please contact Jill Burditt, Policy and Regulations Division, (512) 239-0560.

TRD-200200942
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 15, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 285

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the proposed amendment to §285.5, Submittal Requirements for Planning Materials; and new §285.8, Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land of 30 TAC Chapter 285, On-Site Sewage Facilities.

The proposed revisions to Chapter 285 implement House Bill 2912, §20.03, 77th Legislature, 2001, to provide the commission the authority to permit multiple treatment and disposal systems located on one tract of land as an OSSF, provided that: the tract of land is at least 100 acres in size; all the systems on the tract of land produce no more than a combined total of 5,000 gallons per day on an annual average basis; the systems are only used on a seasonal or intermittent basis; and the systems are used only for disposal of sewage produced on the tract of land.

A public hearing on this proposal will be held on March 26, 2002, in Austin at 10:00 a.m. in Building C, Room 131E at the TNRCC central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2001-096-285-WT. Comments must be received by 5:00 p.m., April 1, 2002. For further information, please contact Joseph Thomas, Policy and Regulations Division, (512) 239-4580.

TRD-200200954
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 15, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of February 12, 2002 through February 14, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF FAIRFIELD has applied for a renewal of TPDES Permit No. 10168-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 4000 feet north of the intersection of U.S. Highway 84 and Farm-to-Market Road 488, approximately 5000 feet northeast of the intersection of U.S. Highways 75 and 84 in Freestone County, Texas.

CITY OF GARLAND which operates the Newman Electric Plant, a steam electric station, has applied for a renewal of TPDES Permit No. 03519, which authorizes the discharge of cooling tower blowdown from Units 1 and 2, low volume wastewater, and storm water on an intermittent and flow variable basis via Outfall 001; and cooling tower blowdown from Units 3,4, and 5 and low volume wastewater on an intermittent and flow variable basis via Outfall 002. The facility is located on the north side of State Highway 66, approximately 2000 feet east of the intersection of State Highway 66 and State Highway 78 in the City of Garland, Dallas County, Texas.

HANSON AGGREGATES CENTRAL, INC has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0000345 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 01406. The draft permit authorizes the discharge of wash water and storm water on a flow variable basis via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The applicant operates a limestone crushing and washing plant. The plant site is located on Farm-to-Market Road 2952, one-half mile east of Lake Bridgeport and three miles west of the city of Bridgeport, Wise County, Texas.

CITY OF SEAGOVILLE has applied for a renewal of TPDES Permit No. 10370-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located approximately 0.65 mile northeast of the intersection of Malloy Bridge Road and U.S. Highway 175 and approximately 0.5 mile north of U.S. Highway 175 in Dallas County, Texas.

SPLENDORA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 11143-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. This application was submitted to the TNRCC on October 10, 2001. The facility is located east of State Highway Spur 512, approximately 0.4 mile northeast of the intersection of State Highway Spur 512 and Farm-to-Market Road 2090 in Montgomery County, Texas.

TRD-200201001
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 19, 2002

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North Texas Tollway Authority

RFP Qualified Constructor of a Fiber Optic Network

Notice of Intent

Notice of Invitation. The North Texas Tollway Authority (the NTTA), a regional tollway authority and a political subdivision of the State of Texas, intends to issue a Request for Proposal (RFP) to enter into an agreement or agreements with a qualified constructor of a Fiber Optic Network.

To be considered, potential proposers must submit a Letter of Request, requesting a copy of the Request for Proposal (RFP), which letter must also contain the name of the proposer, a contact person, and an address to which the RFP may be sent. The NTTA will send only one copy of the RFP to each proposer.

Deadline. A Letter of Request notifying the NTTA of a request for an RFP will be accepted by fax at (214) 528-4826, or by mail or hand delivery to: North Texas Tollway Authority, 5900 W. Plano Parkway, P.O. Box 260729, Plano, Texas 75026, Attn: Rick Herrington

Letters of Proposal will be received until 4:00 p.m. on March 29, 2002.

Agency Contact. Any requests for additional information regarding this notice of invitation should be sent, in writing, to Mr. Rick Herrington, Director of Information Technology, at the above address or fax number.

TRD-200200997
Katherine D. Nees
Deputy Executive Director
North Texas Tollway Authority
Filed: February 19, 2002

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Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas proposed amendments to 16 TAC §26.130, concerning Selection of Telecommunications Utilities. The rule appeared in the February 15, 2002, *Texas Register* (27 TexReg 1062).

Due to an error by the *Texas Register*, subsection (l)(1)(B) on page 1066 was printed with brackets and underlined text. The text should have contained strike-through marks to indicate that it is proposed for deletion. It should read as follows.

"[~~(B) a brief description of the facts of the complaint;~~]"

TRD-200201005

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Public Notice of Amendment to Interconnection Agreement

On February 12, 2002, Southwestern Bell Telephone Company and Viteris, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25449. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25449. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 14, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25449.

TRD-200200991

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2002

♦ ♦ ♦

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 Business Traffic Study Service (BTSS) Pursuant to P.U.C. Substantive Rule §26.215 on or about February 25, 2002, Docket Number 25464.

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 25464. 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 Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200200994
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2002

♦ ♦ ♦

Public Notice of Workshop and Request for Comments in Rulemaking to Address the Redefinition of "Access Line"

The Public Utility Commission of Texas (commission) will hold a workshop on April 11, 2002, at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 to discuss whether changes in technology, facilities, or competitive or market conditions justify a modification in the categories of access lines or whether there is a need to modify the definition of "access line." Project Number 25450, *Rulemaking to Address the Redefinition of Access Lines and Other Outstanding Access Line Implementation Issues*, has been established to review Texas Local Government Code §283.002 under the authority of §283.003.

The commission requests interested persons file comments by March 25, 2002 to the following questions:

1. Have there been any changes in technology or facilities that would justify a modification to the categories of access lines as developed by the commission?

2. Have there been any changes in the competitive or market conditions that would justify a modification to the categories of access lines as developed by the commission?

3. In situations where a certificated telecommunications provider (CTP) end-use customer is geographically located in a different exchange from the CTP's serving switch, should the end-use customer's line be classified as an access line? If not, how should it be classified?

4. Considering line sharing or line splitting scenarios:

a. What is the appropriate quantification of the line(s)?

b. What compensation is appropriate?

5. What, if any, other issues regarding redefinition of access lines should be addressed by the commission?

Responses 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 30 days of the date of publication of this notice. Electronic copies should be submitted, as well. All responses should reference Project Number 25450.

Questions concerning the workshop or this notice should be referred to Hayden Childs, Telecommunications Policy Analyst, Telecommunications Division, (512) 936-7390, hayden.childs@puc.state.tx.us, or Michelle Lingo, Senior Attorney, Policy Development Division, (512) 936-7217, michelle.lingo@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200201008
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2002

♦ ♦ ♦

South East Texas Regional Planning Commission

Public Opening of Request for Proposal for 9-1-1 Mapping Application

South East Texas Regional Planning Commission 9-1-1 Emergency Communications will open submitted proposal responses to their mapping application Request for Proposal No. 02-911-01 issued on February 21, 2002, on **Monday, March 25, 2002 at 2:00 p.m. central time at 2210 Eastex Freeway, Beaumont, Texas.**

TRD-200201007
Chester Jourdan
Executive Director
South East Texas Regional Planning Commission
Filed: February 19, 2002

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal to the University's contract with consultant Thomas A. Wood, 2115 Avenue T, Huntsville, Texas 77340. The original contract was in the sum of $6,000 plus expenses. The contract will be renewed for a total multiple year sum not to exceed $30,000.00, including all past and future fees and expenses.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936)468-2906.

TRD-200200983
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 15, 2002

♦ ♦ ♦

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant John Merbler, Ph.D., 2000 Cambridge Drive, Muncie, Indiana 47304. The original contract was in the sum of $6,000 plus expenses. The contract will be renewed for a total multiple year sum not to exceed $25,000.00, including all past and future fees and expenses.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936)468-2906.

TRD-200200984
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 15, 2002

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Aviation

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-200200917
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 14, 2002

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee.

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members, which are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the public.

The purpose and tasks of the Medical Advisory Committee are outlined in the Texas Workers' Compensation Act, §413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines.

The Medical Advisory Committee meetings are scheduled for every month of the year; however, meetings may occur less frequently, and must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings of the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee positions currently open:

1. Alternate member -Osteopath, term through 8/31/03

2. Primary and Alternate member - Dentist, term through 8/31/03

3. Alternate member - Pharmacist, term through 8/31/03

4. Alternate member - Employee, term through 8/31/02

5. Primary and Alternate member - Acupuncturist, terms through 8/31/03.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us* and then clicking on "Events," then "Calendar," then "Medical Advisory Committee." Applications may also be obtained by calling Jane McChesney at 512-804-4855, or Ruth Richardson at 512-804-4850.

The Texas Workers' Compensation Commission at its August 16, 2001 public meeting revised the Procedures and Standards for its Medical Advisory Committee. The revisions include the addition of an acupuncturist representative, qualifications for members who represent specific health care provider groups, and terms of appointment for all positions. The approved Procedures and Standards are as follows:

Procedures and Standards for the Medical Advisory Committee to the Texas Workers' Compensation Commission

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment. Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200201002
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: February 19, 2002

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 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), 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 19, April 13, July 13, and October 12, 2001). 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).

Texas Register
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❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
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Texas Workers Compensation Commission, Title 28

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Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code	
Information	(512) 475-2700
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Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

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