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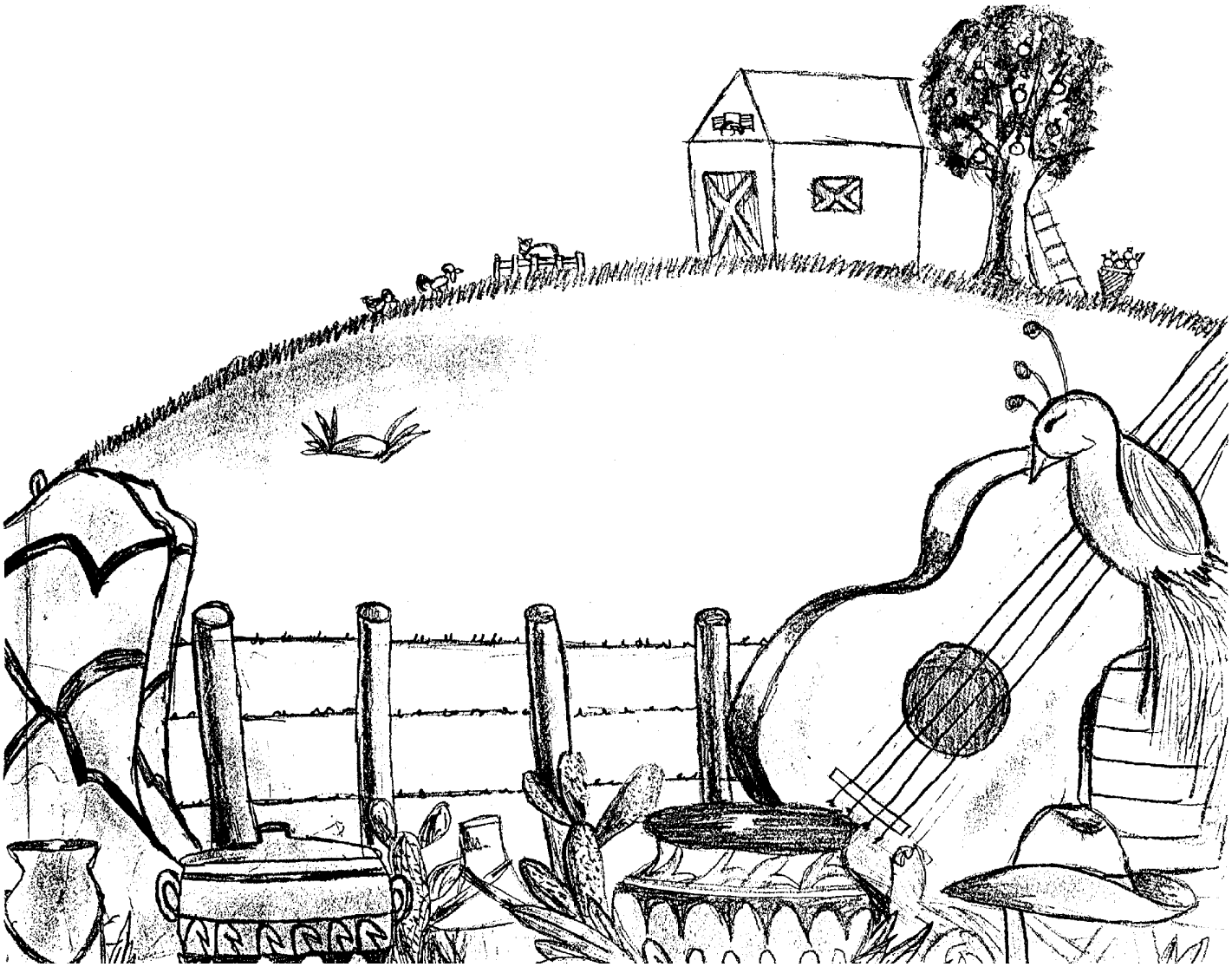

This month's front cover artwork:

Artist: *Christina Luna*
8th Grade
Dr. Armando Cuellar M.S.

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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(800) 22607199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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

THE GOVERNOR

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

Appointments

Appointments for March 14, 2002.

Appointed to the Texas State Board of Physical Therapy Examiners for a term to expire on January 31, 2005, George Scott, Jr. of Lubbock (replacing Holly Hall of Sherman who resigned).

Appointed to the Texas State Board of Physical Therapy Examiners for terms to expire on January 31, 2007, Dora L. Ochoa-Rutledge of San Antonio (replacing Susan Tripplehorn of Pampa whose term expired), Karen L. Gordon of Port O'Connor (replacing Mary Daulong of Dallas whose term expired).

Rick Perry, Governor

TRD-200202359

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Appointments for April 12, 2002.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Felipe T. Alanis, Ph.D. of Austin (replacing Jim Nelson who no longer qualifies).

Appointed to the San Jacinto Historical Advisory Board for a term to expire on September 1, 2007, Jeffrey D. Dunn of Dallas, (Reappointed).

Appointed to the Governor's Council on Science and Biotechnology Development, pursuant to Executive Order #RP-10, for a term at the pleasure of the Governor, Norval F. Pohl, Ph.D. of Denton, (replacing Chancellor Alfred Hurley).

Appointments for April 16, 2002.

Appointed to the Texas Board of Examiners of Psychologists for a term to expire on October 31, 2003, Catherine Bernell Estrada of Dallas (replacing Betty Holmes Ray of Abilene who resigned).

Appointed to the Texas Board of Examiners of Psychologists for a term to expire on October 31, 2005, Michael D. Nogueira of Corpus Christi (replacing Karla Hayes of Amarillo who resigned).

Appointed to the Texas Board of Examiners of Psychologists for a term to expire on October 31, 2007, Pauline Amos Clansy Ed.D. of Houston (replacing Barry Dewlen of San Antonio whose term expired), Arthur E. Hernandez, Ph.D. of San Antonio (replacing Emily Sutter of Houston whose term expired), Jess Ann Thomason of Midland (replacing Nelda Smith of Longview whose term expired).

Appointed to the Texas Woman's University Board of Regents for a term to expire on February 1, 2003, Tegwin Ann Pulley of Dallas (replacing Cynthia Shepard Perry of Houston who resigned).

Rick Perry, Governor

TRD-200202401

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0488

The Honorable Rene O. Oliveira, Chair, Committee on Ways and Means, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the City of Lake Jackson's sales and use tax election proposition allows expenditure of the taxes for an access road to service undeveloped commercially zoned property (RQ-0454-JC)

S U M M A R Y

Under section 4B of the Development Corporation Act of 1979, the sales and use tax is levied for the benefit of the Lake Jackson Development Corporation established by the City of Lake Jackson under section 4B; and the Corporation, rather than the City, is authorized to expend the tax proceeds for authorized projects.

The 1995 sales and use tax election proposition approved by the voters of the City of Lake Jackson pursuant to section 4B does not prohibit the Lake Jackson Development Corporation from using the sales tax proceeds to build an access road to service undeveloped commercially zoned property that fronts a state highway if the expenditure will promote development of new or expanded business enterprises.

Opinion No. JC-0489

The Honorable Mike Moncrief, Chair, Committee on Health and Human Services, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether article III, section 50 of the Texas Constitution prohibits the Texas Commission for the Blind from contracting with the United States government to operate various vending facilities on federal property under the Federal Randolph-Sheppard Act, 20 U.S.C. ch. 6A, if the contract "create[s] financial exposure to the State for a multi-million dollar service agreement with . . . Federal Departments" (RQ-0455-JC)

S U M M A R Y

To the extent that the Texas Commission for the Blind lends the state's credit in making arrangements under the Randolph-Sheppard Act, 20 U.S.C. ch. 6A (1994 & Supp. V 1999), with the federal government to operate vending facilities on federal property or in licensing blind vendors to operate the vending facilities, the loan of credit has been found to accomplish the public purpose of providing economic opportunity to blind persons. Assuming that such an arrangement is adequately controlled to ensure that the public purpose is accomplished, it does not violate article III, section 50 of the Texas Constitution.

Opinion No. JC-0490

The Honorable Bobbye C. Hill, Wheeler County Attorney, P.O. Box 469, Wheeler, Texas 79096

Re: Whether a member of a school district board of trustees may simultaneously hold the office of county treasurer (RQ-0458-JC)

S U M M A R Y

A county treasurer is not, as a matter of law, barred by either article XVI, section 40 of the Texas Constitution, or by the common- law doctrine of incompatibility from simultaneously holding the office of trustee of an independent school district located within her county.

Opinion No. JC-0491

The Honorable Kenneth Armbrister, Chair, Committee on Criminal Justice, Texas State Senate, P. O. Box 12068, Austin, Texas 78711

Re: Validity of a school district policy regarding corporal punishment and physical restraint of students (RQ-0459-JC)

S U M M A R Y

The policy statement of the Arlington Independent School District regarding corporal punishment and physical restraint is generally within the district's authority to manage the district and to adopt rules for the safety and welfare of students, employees, and property. Disciplinary matters with respect to students receiving special education services in particular instances may implicate rules promulgated by the Commissioner of Education under section 37.0021 of the Texas Education Code, or the Federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1462 (1994 & Supp. I 1995 - Supp. V 1999).

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

TRD-200202370

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 17, 2002

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EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 473. FEES

22 TAC §473.1, §473.2

The Texas State Board of Examiners of Psychologists adopts on an emergency basis amendments to Board rule §473.1, concerning Application Fees (Not Refundable), and §473.2, concerning Examination Fees (Not Refundable), effective May 1, 2002.

The amended rules are being adopted on an emergency basis in order to enable the agency to comply with House Bill 604 mandating an internal audit of the agency by the 77th Texas Legislature.

The emergency adoption of the rules will allow the agency to fulfill requirements of contingent revenue for Fiscal Year 2002-2003 appropriations for the Board.

The amended rules are adopted on an emergency basis under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§473.1. Application Fees. (Not Refundable)

(a) Psychological Associate Licensure - $180 [~~$160~~]

(b) Provisionally Licensed Psychologist - $330 [~~$310~~]

(c) Licensure - $170 [~~$150~~]

(d) Reciprocity - $470 [~~$450~~]

(e) Licensed Specialist in School Psychology - $210 [~~$190~~]

§473.2. Examination Fees. (Not Refundable)

(a) Examination for the Professional Practice of Psychology - $450

(b) Jurisprudence - $210 [~~$200~~]

(c) Oral Examination - $320 [~~$300~~]

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202253
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective Date:May 1, 2002
Expiration Date:August 10, 2002
For further information, please call: (512) 305-7700

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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER D. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §3.72

The Texas Department of Agriculture (the department) proposes amendments to §3.72, concerning reporting requirements for participation in the boll weevil eradication program. The amendments are proposed to clarify reporting requirements found at subsections 3.72 (b) and (c) for cotton growers within an active boll weevil eradication zone. A new subsection (d) is added and provides that the Texas Boll Weevil Eradication Foundation (Foundation) may send a written inquiry directly to a grower who has previously failed to report cotton acreage and location to the Foundation or the Farm Service Agency or a grower who the Foundation has probable cause to believe has planted cotton in an active eradication zone without reporting as required by §3.72. This new subsection is proposed to allow for an alternative, more proactive method for the Foundation to gather necessary acreage and location information from certain growers planting cotton in an eradication zone. New subsection (e) provides that falsely reporting acreage or location of cotton may result in the assessment of an administrative penalty. This new subsection is proposed to make cotton growers aware that falsely reporting information may result in enforcement action being taken against a grower in the same manner as against a grower failing to report acreage and location.

David R. Gipson, deputy general counsel for enforcement, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section, as amended. There will be no fiscal implication for local government as a result of enforcing or administering the section, as amended.

Mr. Gipson also has determined that for each of the first five years the section, as amended, is in effect the public benefit anticipated as a result of enforcing the section will be a more equitable and consistent method for the reporting of cotton location and acreage in active boll weevil eradication zones. Moreover, the ability of the Foundation to be better informed of where all cotton is grown within an active eradication zone will result in a more efficient eradication program which will, in turn, reduce the cost of eradicating boll weevils as well as reduce the cost of mitigating possible damage from a reinfestation of boll weevils into areas previously eradicated. There will be no anticipated costs to microbusinesses, small or large businesses or to persons required to comply with the amendments.

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

The amendments to §3.72 are proposed under the Texas Agriculture Code §74.120, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary to carry out the purposes of Chapter 74, Subchapter D.

The code affected by this proposal is the Texas Agriculture Code, Chapter 74.

§3.72. Requirements for Program Participation.

(a) (No change.)

(b) Participation in the eradication program includes:

(1) timely reporting to the foundation, as specified in subsection (c) or (d) of this section, of all information regarding all commercial and noncommercial cotton and of all cotton grown for ornamental, research, or any other purposes as provided in the Code §74.121;

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

(c) Reporting deadlines.

(1) All acreage planted with cotton and the location of such acreage in an active eradication zone, regardless of which zone, must be reported annually to the foundation by the grower [~~,~~] no [~~not~~] later than the reporting date established for each county by the Farm Service Agency, as specified in [~~on~~] the [~~following~~] map found at paragraph (3) of this subsection. [~~:~~]
[~~Figure: 4 TAC §3.72(c)(1)~~]

(2) If there is a conflict between the dates shown in paragraph (3) of this subsection and the dates established by the Farm Service Agency, the dates established by the Farm Service Agency shall control, unless no such dates have been established, in which event the dates shown in paragraph (3) shall control. [~~Reporting shall be accomplished by:~~]

[~~(A) certifying the acreage with the appropriate Farm Service Agency office by the date specified in paragraph (1) of this subsection; or~~]

[~~(B) filing with the foundation an acreage report form, obtained from the foundation, by the date specified in paragraph (1) of this subsection.~~]

(3) The dates by which cotton acreage and location of such acreagein an active eradication zone must be reported are as follows: Figure: 4 TAC §3.72(c)(3)

(4) The cotton acreage and location of such acreage required to be reported by paragraph (1) of this subsection may instead be reported to the Farm Service Agency, rather than the foundation, provided that the Farm Service Agency office to which the cotton acreage and location of such acreage is reported is in a county within an active eradication zone.

(d) The foundation may send a written inquiry directly to a grower who has previously failed to report cotton acreage or location planted within a then-active eradication zone or to a grower who the foundation has probable cause to believe has planted cotton in an active zone without reporting the acreage or location of such cotton to either the foundation or the Farm Service Agency. The written inquiry shall be sent by certified mail and shall require that the recipient grower certify in writing, on a form supplied by the foundation, either the number of acres and location of each tract of cotton the grower has planted within an active eradication zone for the current growing season or that no acres of cotton are planted in an active eradication zone for the current growing season. The form must be returned within 10 days of receipt by the grower. After delivery or refusal of delivery of the written inquiry, the grower's obligation to report cotton acreage and location may be satisfied only by return of the certification required by this subsection. Failure to return the required certification or refusal of delivery of the written inquiry may result in the assessment of an administrative penalty, which shall not relieve the grower of the requirement to submit the certification required by this subsection. The foundation may send out an additional written inquiry upon refusal of delivery of a previous written inquiry or if the foundation considers a response to a previous written inquiry inadequate. Each written inquiry mailed under this subsection may serve as the basis for a separate violation.

(e) Falsely reporting the number of acres or location of cotton under any provision of this section may result in the assessment of an administrative penalty.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202276

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1071

The Texas Education Agency (TEA) proposes new §61.1071, concerning counseling public school students regarding higher education. The proposed new section incorporates the new requirement that the commissioner adopt rules regarding the provision of counseling about higher education to first-year, and then again senior-year, high school students or high school level open-enrollment charter school students, beginning with the 2002-2003 school year, in accordance with Senate Bill (SB) 158, 77th Texas Legislature, 2001.

TEC, Chapter 33, Service Programs and Extracurricular Activities, Subchapter A, School Counselors and Counseling Programs, was amended by SB 158, 77th Texas Legislature, 2001, to add §33.007, Counseling Regarding Higher Education. This new section includes the requirement that counselors provide information about higher education to students (and students' parents or guardians) during the first and senior years of high school enrollment. The information must include information regarding the importance of higher education; the advantages of completing the recommended or advanced high school program; the disadvantages of taking courses to prepare for a high school equivalency examination relative to the benefits of taking courses leading to a high school diploma; financial aid eligibility; instruction on how to apply for federal financial aid; the center for financial aid information established under TEC, §61.0776; the automatic admission of certain students to general academic teaching institutions as provided by TEC, §51.803; and the requirements for the TEXAS Grant program. TEC, §33.007, as added by SB 158, 77th Texas Legislature, 2001, requires the commissioner to adopt rules regarding the provision of counseling regarding higher education required by §33.007(b).

Robert Muller, associate commissioner for continuing education and school improvement, has determined that for the first five-year period the new section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section. High schools and open-enrollment charter schools may, as a local option, choose to incur expenditures related to providing and disseminating the required information; however, they are not required to do so.

Mr. Muller has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the new section will include that a variety of information regarding higher education will be provided to students (and their parents or guardians) during the first and senior years of high

school. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code (TEC), §33.007, as added by Senate Bill 158, 77th Texas Legislature, 2001, which authorizes the commissioner to adopt rules regarding the provision of counseling regarding higher education as required by §33.007(b) to high school students or open-enrollment charter school students other than those for whom the 2001-2002 school year is the first or senior year of high school.

The new section implements the Texas Education Code, §33.007, as added by Senate Bill 158, 77th Texas Legislature, 2001.

§61.1071. Counseling Public School Students Regarding Higher Education.

(a) In accordance with Texas Education Code (TEC), §33.007, a counselor shall provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year.

(b) The information that counselors provide in accordance with subsection (a) of this section must include information regarding all of the following:

(1) the importance of higher education, which:

(A) includes workforce education, liberal arts studies, science education, graduate education, and professional education to provide broad educational opportunities for all students;

(B) furthers students' intellectual and academic development; and

(C) offers students more career choices and a greater potential earning power;

(2) the advantages of completing the recommended high school curriculum or higher, including, at a minimum, curriculum programs which:

(A) provide students with opportunities to complete higher-level course work, particularly in mathematics, science, social studies, and languages other than English, thereby:

(i) increasing students' readiness for higher education and reducing the need for additional preparation for college-level work;

(ii) preparing students for additional advanced work and research in both career and educational settings;

(iii) allowing students, in certain instances, to receive college credit for their high school course work; and

(iv) enabling students to be eligible for certain financial aid programs for which they would otherwise be ineligible (e.g., the TEXAS grant program);

(B) enable students to receive an academic achievement record noting the completion of either the recommended program or higher; and

(C) provide students who elect to complete the distinguished achievement program with an opportunity to demonstrate student performance at the college or career level by demonstrating certain advanced measures of achievement;

(3) the advantages of taking courses leading to a high school diploma relative to the disadvantages of preparing for a high school equivalency examination, including:

(A) the progressive relationship between education and income; and

(B) the greater possibility for post-secondary opportunities (including higher education and military service) that are available to students with a high school diploma;

(4) financial aid eligibility, including;

(A) the types of available aid, not limited to need-based aid, and including grants, scholarships, loans, tuition and/or fee exemptions, and work-study;

(B) the variety of organizations that offer financial aid, including, but not limited to, federal and state government, civic or church groups, foundations, nonprofit organizations, parents' employers, and institutions of higher education; and

(C) the importance of meeting financial aid deadlines;

(5) instruction on how to apply for financial aid, including guidance and assistance in:

(A) determining when is the most appropriate time to complete financial aid forms; and

(B) completing and submitting the Free Application for Federal Student Aid (FAFSA) or any new version of this form as adopted by the U.S. Department of Education;

(6) the Texas Higher Education Coordinating Board's Center for Financial Aid Information, including its toll-free telephone line, its Internet website address, and the various publications available to students and their parents;

(7) the Automatic Admissions policy, which provides certain students who graduate in the top 10% of their high school class with automatic admission into Texas public universities; and

(8) the general eligibility and academic performance requirements for the TEXAS grant program, which allows students meeting the academic standards set by their college or university to receive awards for up to 150 credit hours or for six years or until they receive their bachelor's degree, whichever occurs first. The specific eligibility and academic performance requirements, along with certain exemptions to these requirements, are specified in Chapter 22, Subchapter L, of this title (relating to Toward Excellence, Access and Success (TEXAS) Grant Program). The general requirements include:

(A) Texas residency;

(B) financial need;

(C) registration for the Selective Service or exemption from this requirement;

(D) completion of the recommended high school program or higher or, in the case of a public high school that did not offer all of the courses necessary to complete the recommended or higher curriculum, a certification from the district and high school counselor that certifies that the student completed all courses toward such a curriculum that the high school had to offer;

(E) enrollment of at least three-quarters time in an undergraduate degree or certificate program within 16 months of high school graduation, unless an allowable exemption is satisfied; and

(F) no conviction of a felony or crime involving a controlled substance, unless certain conditions are met.

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

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202224
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-9701

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CHAPTER 101. ASSESSMENT
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §101.3

The State Board of Education (SBOE) proposes new §101.3, concerning the statewide assessment program. The proposed new section describes, in general, SBOE policy relating to the statewide assessment program in accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B.

In May 2001, the SBOE approved the proposed repeal of and new 19 TAC Chapter 101 to comply with changes in statute and revisions related to new assessments as well as other clarifying amendments. The intent of the proposed new sections was not only to reflect the recent changes to update the assessment program, but also to more effectively define, reinforce, and communicate state law and rules governing the assessment program. The proposed repeal of and new 19 TAC Chapter 101, Assessment, was published in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3894). With the exception of §101.3, which was pending an Attorney General's (AG) opinion, the repeal of and new 19 TAC Chapter 101 was filed as adopted with the *Texas Register* and published in the November 9, 2001, issue (26 TexReg 9091). The adopted new rules became effective on November 15, 2001. In accordance with Texas Government Code and *Texas Register* rules, the proposed new §101.3, which was published in the *Texas Register* on June 1, 2001, expired on November 30, 2001, since it had not been filed as adopted or withdrawn within six months of the proposal's publication date. Notice of the automatic withdrawal was published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10493).

On March 12, 2002, the AG issued Opinion No. JC-0478 clarifying the SBOE's authority to adopt rules relative to the statewide assessment system. Proposed new 19 TAC §101.3, being submitted at this time, is reflective of the AG's opinion. The proposed new section conveys the goal of the statewide assessment program and lists the general quality standards upon which the program shall be based.

Ann Smisko, associate commissioner for assessment, curriculum, and technology, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Smisko has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the new section is that the Texas student assessment program will provide Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the Texas Essential Knowledge and Skills (TEKS). There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code (TEC), Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The new section implements the Texas Education Code, Chapter 39, Subchapter B.

§101.3. Policy.

(a) The goal of the statewide assessment program is to provide all eligible Texas students an appropriate statewide assessment that measures and supports their achievement of the essential knowledge and skills of the state-mandated curriculum.

(b) To maximize its effectiveness for educators and students, the statewide assessment program shall be based on the following quality standards.

(1) Tests shall be aligned to the essential knowledge and skills of the state-mandated curriculum in all subject areas tested.

(2) Tests shall be reliable and valid measures of the essential knowledge and skills and shall be administered in a standardized manner.

(3) Test results at the student, campus, district, regional, and state levels shall be reported in a timely and accurate manner.

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

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202223

Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER D. BARBER SHOPS

22 TAC §51.93

The Texas State Board of Barber Examiners proposes new §51.93, concerning Sanitation Rules for Barber Shops, Schools and Colleges. The proposed new rule is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session, and sets forth the criteria governing sanitary conditions of barber shops, barber schools and colleges.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of the state or local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that barber shops, barber schools and colleges are operated and maintained with sanitary conditions. There will be an effect on small businesses. The anticipated economic costs to the persons who are required to comply with the rules as adopted are negligible.

Comments on the proposed new rule may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Dr., Suite 217, Austin, Texas 78731 (1-888-870-8755; Fax 512-458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date the proposed action is published in the *Texas Register*.

The new rule is proposed under the Texas Occupations Code Chapter 1601, §1601.152, which directs the board to adopt reasonable rules on sanitation for the operation of barber shops, specialty shops, and barber schools, and Chapter 1601, §1601.151, which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by the new rule.

§51.93. Sanitation Rules for Barber Shops and Barber Schools and Colleges.

(a) Shop Conditions

(1) Establishments to be lighted and ventilated. Every public barber shop and barber school and college as defined in Texas Occupations Code Chapter 1601 shall be properly and adequately lighted and ventilated. An adequate volume of air must be exhausted to remove contaminants from aerosol products. Fresh air must be provided to replace air exhausted.

(2) Walls, ceilings, et cetera, to be kept clean. The walls, ceilings, furniture and other fixtures, and all other exposed surfaces in every such establishment shall be kept clean, free from dust, and maintained in a state of good repair.

(3) Floors to be kept clean. Floors of every such establishment shall be thoroughly cleaned each day. All hair dropping upon the floor shall be removed therefrom as soon as practicable and in such a manner as not to cause a nuisance. Floors shall be maintained in a state of good repair.

(4) Suitable equipment. Establishments shall be suitably equipped to give adequate service to patrons and shall never be used as a living, dining, or sleeping apartment.

(5) A barber shop or barber school or college must be in a separate room from sleeping quarters and the owner or operator shall permit no person to sleep in any room used wholly or in part as such facility. There shall be no entrances from the facility opening directly into sleeping quarters.

(6) A barber shop or barber school or college must be separated from a place where food is prepared or served by a solid wall from floor to ceiling of lath or plaster or glass or other solid material.

(b) Water Supply, Sewerage, and Toilet Facilities

(1) All barber shops, barber schools, or colleges shall be supplied with an adequate supply of hot and cold water under pressure. When water is not obtained from an acceptable public supply, water must meet the bacteriological, chemical, and physical requirements for drinking water systems of the Texas Department of Health. Whenever possible, the source of water supply shall be from an existing public drinking water system. Cross connections between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited. Protection against backflow and back siphonage shall be provided by proper air-gaps or approved backflow preventers where necessary.

(2) Adequate and safe sewage facilities shall be provided. Whenever possible, the facility shall be connected to a public sewerage facility. Where public sewerage is not available, adequate treatment facilities meeting the standards of the Texas Department of Health and approved by the local health authority shall be installed to dispose of sewage.

(3) Toilet facilities with flush toilets shall be suitably located in adequately and properly ventilated compartments with closing doors that lock from the inside. Toilet facilities in toilet rooms, separate for each sex, shall be provided in all places of employment in accordance with the table in this part.

(4) The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where only one toilet room is reasonably available and can be locked from the inside, the rule requiring separate toilet rooms for each sex can be waived. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the table: Number employees--Number water closets: 1 to 15--1; 16 to 35--2; 36 to 55--3. When persons other than employees are permitted use of toilet facilities on the premise, the number of such facilities shall be appropriately increased in accordance with the table. For each three required toilet facilities, at least one lavatory shall be located either in the toilet room or adjacent

thereto. Where only one or two toilet facilities are provided, at least one lavatory so located shall be provided.

(5) Washing facilities to be provided. Every such establishment shall be provided with suitable and adequate washing facilities for barbering services. Sinks or wash basins must be of nonabsorbent material and properly trapped, with not less than one sink per two chairs.

(6) Drinking water facilities. Where fountain facilities designed for drinking from the stream are provided for dispensing drinking water, such facilities shall be equipped with approved type angle jet fountain heads. No common drinking cups are permitted.

(c) Use of Equipment

(1) No barber or other person affected by these rules shall use on any person a comb, hairbrush, hair duster, mug, shaving brush, razor, shears, scissors, clippers, or tweezers or any similar articles that are not thoroughly cleaned and disinfected since last used.

(2) The use of vacuum type devices for removal of loose hair is satisfactory provided that the portion of the device coming in contact with the patron is easily removed and constructed for easy cleaning and disinfection and shall be disinfected prior to use on each patron.

(d) Attendants to Wash Hands. Attendants shall wash their hands thoroughly with soap and hot water before attending any person.

(e) Cleaning and Disinfecting. A disinfectant, germicide, or bactericide used shall be approved by the Environmental Protection Agency and used according to label instructions. When not in use, instruments may be placed in dry disinfectant equipment or under germicidal ultraviolet light. Metallic instruments with a cutting edge may be disinfected after proper washing by wiping carefully with a clean cotton pad saturated with a 70% alcohol solution, or clipper blades may be disinfected with spray-type disinfectants approved by the Environmental Protection Agency.

(f) Towels

(1) Individual towels required. No towels or washcloths shall be used in any such establishment for more than one person without being properly laundered and sanitized by regular commercial laundering or noncommercial laundering process. The process shall include washing with a laundry detergent and rinsing at a minimum temperature of 150 degrees Fahrenheit for not less than 20 minutes. A bleach or sanitizing cycle using a rinse containing 100 ppm of available chlorine for three minutes may be used in addition to the above wash and rinse cycle. A predrying procedure for towels and washcloths will facilitate the removal of hair. Pre or post drying temperatures should not exceed 165 degrees Fahrenheit.

(2) Wet towels and washcloths must be removed from work-stands upon completion of service to each patron.

(3) Individual headrest coverage required. Before any patron attended at any such establishment is permitted to recline in a chair, the headrest of the chair shall be covered with a clean towel or clean sheet or paper not previously used for any other purposes.

(4) Dipping towels, shaving mugs, brushes, et cetera, in water containers is prohibited.

(5) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(6) Single use towels may be used on only one person.

(7) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(8) Single-use towels may be used on only one person.

(g) Use of Stick Astringent Prohibited. No alums or other astringent in stick or lump form shall be used in any such establishment. (Powdered or liquid caustics are suggested.)

(h) Creams, Lotions, and Cosmetics. All creams, lotions, and other cosmetics used for patrons must be kept in clean and closed containers.

(i) Powder Boxes. Open powder boxes must not be used in a reception room and booths for patrons. Powder must be in shakers or similar receptacles.

(j) Sanitary Removal of Creams and Semisolid Substances. Creams and other semisolid substances must be dipped from the container with disinfected articles or spatula; removing such substances with the fingers is prohibited.

(k) Communicable Diseases and Infections

(1) Employees. No person who is knowingly affected with a disease in communicable form shall work or be employed in such establishment as required in Texas Occupations Code Chapter 1601.

(2) Patrons. No person who to his/her own knowledge is affected with a known disease in communicable form shall be attended in any such establishment.

(l) Regulations To Be Posted. Sufficient copies of these regulations shall be kept posted in conspicuous places in every such establishment

(m) Penalties. Whoever violates any provision of these rules and regulations as provided in the Texas Occupations Code Chapter 1601 or refuses to comply with any provision thereof shall be fined not to exceed $1,000.

(n) Americans with Disabilities Act. To the extent that these rules are in conflict with the Americans with Disabilities Act. The Act supercedes these rules.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202295
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 458-1091

SUBCHAPTER G. PERSONNEL--QUALIFICATIONS AND DUTIES

22 TAC §51.121

The Texas State Board of Barber Examiners proposes an amendment to §51.121, concerning Barber Inspector. The proposed amendment provides that an applicant for the position of barber inspector must be a licensed barber and must have

practiced barbering for at least three (rather than five) years immediately prior to applying for the position of barber inspector.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of the state or local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to enlarge the pool of applicants for barber inspector while still ensuring that applicants for barber inspector have sufficient experience as barbers to bring expertise to the position of barber inspector. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposed amendment may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Dr., Suite 217, Austin, Texas 78731 (1-888-870-8755; Fax 512-458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date of the proposed action is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code Chapter 1601, §§1601.101, 1601.104, and 1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

§51.121. Barber Inspector.

All applicants for the position of barber inspector must be licensed barbers and must have practiced barbering for at least <u>three</u> [~~five~~] years immediately prior to applying for the position of barber inspector. An applicant must have a high school diploma or GED.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202292
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER H. INFORMAL HEARING DISPOSITION

22 TAC §51.131

The Texas State Board of Barber Examiners proposes amendments to §51.131, concerning Informal Disposition. The proposed amendments are pursuant to the Texas Occupations Code Chapter 1601, §1601.706. The proposed amendments rename §51.131 Informal Disposition as Administrative Procedures Regarding Disciplinary Actions Against Licensees and add a new subsection (b) such that the Executive Director may sign a Board Order once a Proposal for Decision has been ratified by the Board.

Douglas A. Beran, Ph.D., Executive Director, has determined that for the first five-year period the rule is in effect, enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of the state or local government.

Dr. Beran also has determined that for each year of the first five-year period the rule is in effect public benefit anticipated as a result of enforcing the rule will be to ensure that schools, licensees, and permit holders comply with the requirements of the rules of the board. There will not be an effect on small businesses. There are anticipated economic costs to persons who are required to comply with the rule as adopted.

Comments on the proposed amendment may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Dr., Suite 217, Austin, Texas 78731 (1-888-870-8755; FAX 512-458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code Chapter 1601, §1601.706 and the Texas Occupations Code Chapter 1601, §1601.151 which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by the amendments.

§51.131. <u>Administrative Procedures Regarding Disciplinary Actions Against Licensees</u> [~~Informal Disposition~~].

<u>(a)</u> Informal hearings of disciplinary actions may be conducted after the filing of a written complaint, but before any formal board action is taken. Informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default. Informal hearings may be chaired by one board member, or designate or representative of the board. The Barber Board shall present its information and the party or parties affected shall have the opportunity to show compliance with the law at the informal hearing, in an effort to bring about the just and equitable solution of the problems without a formal hearing before the full board. All informal dispositions of matters shall not be final and effective until the full board at a regularly called session endorses and renders its acceptance of the proposed agreement of the parties. Such informal hearings shall be held without prejudice to the right of the board thereafter, if the controversy is not resolved, to institute a formal hearing governing the same matters, or the right of the licensee involved, if the controversy is no resolved, to request a formal hearing.

<u>(b) The Executive Director may sign a Board Order once a Proposal for Decision has been ratified by the Board.</u>

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202294

Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners proposes amendments to §51.141, concerning Definitions. The proposed amendments provide that (1) the use of any blade, drill, or cutting tool for the purpose of removing corns or calluses is considered a medical practice and is prohibited and that (2) the use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the Texas State Board of Barber Examiners.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of the state or local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to prohibit the use of unsafe tools and to ensure the safe use of power or manual blades, drills, or cutting tools by manicurists or pedicurists licensed by the Board. There will not be an effect on small businesses. The anticipated economic costs to the persons who are required to comply with the rules as adopted are contingent upon the training costs and travel costs to participate in approved training programs.

Comments on the proposed amendment may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Dr., Suite 217, Austin, Texas 78731 (1-888-870-8755; Fax 512-458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date of the proposed action is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

§51.141. Definitions.

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

(1) Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a line drawn from the bottom of the ear.

(2) The hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(3) The Sideburn--A sideburn may be part of a hair cut or style that is a continuation of the natural scalp hair growth, and must not extend below the bottom of the ear lobe, and must not be connected to any other bearded area on the face. Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.

(4) The Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture and shall only be trimmed, shaped or cut by a licensed barber.

(5) Out of Scope--

(A) The use of any blade or cutting tool for the purpose of removing corns or calluses is considered a medical practice and is prohibited. [~~The use of any blade, drill or cutting tool (power or manual) designed for the purpose of removing corns and calluses or violating the nail bed in any manner is prohibited.~~]

(B) The use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the Texas State Board of Barber Examiners.

(C) [~~(B)~~] Any chemical currently not approved for a particular use by the EPA, FDA, or any other governmental agency is prohibited.

(D) [~~(C)~~] Or any other practice prohibited by Barber Law or Board Rules.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202293
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 458-1091

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.9

The State Board of Dental Examiners proposes amendments to §101.9, Dental Profiles. Section 101.9 provides that all applicants for renewals of dental licenses must include specified data on a form provided by the State Board of Dental Examiners and must do so by June 1, 2002. The State Board of Dental Examiners proposes to amend the effective date of this rule to begin on January 1, 2003.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be limited fiscal implications for local or state government as a result of enforcing or administering the amended rule.

There is an anticipated economic cost to persons who are required to comply with the amended section. There is no anticipated local employment impact as a result of enforcing this amended section.

Mr. Hill also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be access by the public to licensees' information which will be uniform.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses. The requirement under §101.9 will impact individuals who make application for renewal and not small businesses.

Comments on the proposed amendment may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code§2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, and Senate Bill 187, § 11, 77th Legislature, 2001, which requires the Board to adopt rules to establish a profile system.

§101.9. Dental Profiles.

(a) Beginning January 1, 2003, [~~June 1, 2002,~~] all applications for renewals of dental licenses, on a form provided by the State Board of Dental Examiners, must include data to be used to provide to the public a "profile" for each licensed dentist. The profile data form is part of the renewal application and must be completed and all fees paid before the agency will process the renewal application.

(b) When a renewal application is returned to an applicant because it is incomplete or fees are not paid, and the corrected application is received after the applicant's license has expired, statutory penalties, as set forth will be assessed and collected before the license is renewed.

(c) Dentists' profile data to be collected and made available to the public includes the following for each dentist:

(1) Name of license holder;

(2) Primary practice location address or a statement that the dentist does not practice dentistry;

(3) Telephone number at the primary practice location;

(4) Whether patient areas are accessible to disabled persons in compliance with the Americans With Disabilities Act (AwDA);

(5) Whether the dentist accepts insurance;

(6) Whether the dentist is a Medicaid provider;

(7) Whether the dentist provides care under the Children's Health Insurance Program (CHIP) or other state program;

(8) The dental degree held by applicant and the school that conferred it;

(9) Specialty certifications held, if any;

(10) The number of years the dentist has practiced;

(11) Any hospital affiliation(s);

(12) Language translating services available, if any; and

(13) Whether translating services are available for patients with impairment of hearing.

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

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

TRD-200202325
Jeffry Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6400

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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners proposes amendments to §104.1, requirements for continuing education credit hours during renewal of licensure in compliance with maintaining licensure. Section 104.1 provides that for renewals of licensure beginning in 2001, and thereafter, licensees must provide proof of completion of twelve hours of acceptable continuing education in order to maintain compliance for licensure. The State Board of Dental Examiners proposes to repeal §104.1 at paragraph (2) in its entirety. Section 104.1(2) provided that all licensees begin a one year continuing education period on their renewal dates in the year 2000 and that for licensees whose three year renewal period ends in 2000, or would have ended in 2001 or 2002, the amount of continuing education due for that three year period, or portion of a three period, shall be calculated on the basis of one hour of continuing education each month of the period that has passed on the 2000 renewal date. Because the State Board of Dental Examiners no longer requires completion of thirty-six continuing credit hours within a three year renewal period, §104.1(2) is moot and no longer applicable. The remainder of §104.1 shall remain unchanged with no proposed amendments to the current language.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be limited fiscal implications for local or state government as a result of enforcing or administering the rule.

There is no anticipated economic cost to persons who are required to comply with the elimination of §104.1(2). There is no anticipated local employment impact as a result of eliminating this section.

Mr. Hill also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be uniformity in licensees' continuing education credit hours within the renewal period for licensees.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses. The requirements of §104.1 will impact individuals who complete continuing education credit hours and not small businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code§2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, and §257.005 which provides continuing education requirements for dentists and dental hygienists.

The proposed amended rule does not affect other statutes, articles, or codes.

§104.1. Requirement.

[~~For renewals beginning in 2001 and thereafter,~~] As [~~as~~] a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

(1) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

~~[(2) All dentists and dental hygienists will begin a one year continuing education period on their renewal dates in the year 2000. For licensees whose three year period ends in 2000, or would have ended in 2001 or 2002, the amount of CE due for that three year period, or portion of a three year period, shall be calculated on the basis of one hour of CE for each month of the period that has passed on the 2000 renewal date. No more than 36 hours of CE will be due for any three year period described herein. In the event that a licensee has CE hours in excess of the amounts required hereby, the excess may be carried forward pursuant to paragraph (1) of this section.]~~

(2) [~~(3)~~] Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Continuing Education Providers). A licensee who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Continuing Education Committee.

(A) Such requests must be in writing and submitted to and approved by the Continuing Education Committee prior to the expiration of the annual period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in paragraph (5) of this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include residence outside the United States, unanticipated financial or medical hardships, or other extraordinary circumstances that are documented.

(D) Should the request be denied, the licensee must complete requirements as cited in paragraph (5) of this section.

(3) [~~(4)~~] Examiners for the Western Regional Examining Board (WREB) will be allowed credit for no more than 6 hours annually, obtained from WREB's calibration and standardization exercise. This provision shall not apply to active board members.

(4) [~~(5)~~] All 12 hours must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(5) [~~(6)~~] Hours in the standards of the Occupational Safety and Health Administration (OSHA) or in cardiopulmonary resuscitation (CPR) may not be considered in the 12-hour requirement.

(6) [~~(7)~~] No more than 4 hours in any 12-hour accumulation may be in self-study. These self-study hours must be provided by those entities cited in §104.2. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(7) [~~(8)~~] Any individual or entity may petition one of the providers listed in §104.2 of this title (relating to Providers) to offer continuing education.

(8) [~~(9)~~] No more than 4 hours in a 12-hour accumulation may be interactive computerized courses. These interactive computerized courses must be provided by those entities cited in §104.2 of this title. Examples of interactive computer courses include those that involve interactive dialogue through electronic linkage with an instructor in which manipulation of text or data by the licensee occurs.

(9) [~~(10)~~] Providers cited in §104.2 of this title (relating or Providers) will approve individual courses and/or instructors.

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

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

TRD-200202326
Jeffry Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6400

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22 TAC §104.6

The State Board of Dental Examiners proposes new §104.6 Audits. Section 104.6 provides that all licensees are subject to audit by the State Board of Dental Examiners for purposes of ensuring compliance with the continuing education requirements under Chapter 104 of the State Board of Dental Examiners' Rules. The purpose of §104.6 is to enable the State Board of Dental Examiners to conduct audits to verify that licensees are in compliance with the continuing education credit hours requirements of Chapter 104 of the rules of the State Board of Dental Examiners.

Jeffry R. Hill, Executive Director, State Board of Dental Examiners, has determined for the first five year period the proposed rule is in effect there will be limited fiscal implications for local or state government as a result of enforcing or administering the rule.

There may be a limited anticipated economic cost to persons who are required to comply with this proposed section in the event that an audit is conducted for those individual licensees who are being audited. There is no anticipated local employment impact as a result of enforcing this amended section.

Mr. Hill also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of the proposed section will be that licensees are current in their training through the required number of continuing education credit hours. Compliance of the required number of continuing education credit hours allows licensees to deliver un-compromised dental services to the public.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore the SBDE has determined that compliance with the proposed rule will not have an adverse economic impact on small business when compared to large businesses. The requirement for this section will impact individual licensees and not small businesses.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The proposed rule is proposed under Texas Government Code§2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, and §257.005 which provides continuing education requirements for dentists and dental hygienists.

§104.6. Audits.

All licensees are subject to audit by the State Board of Dental Examiners for purposes of ensuring compliance with the continuing education requirements as outlined in this chapter (Continuing Education).

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

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

TRD-200202327
Jeffry Hill
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6400

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes amendments to §465.38, concerning Psychological Services in the Schools. The amendments are being proposed in order to clarify that non-LSSPs may not perform contracted school psychological services.

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

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

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§465.38. Psychological Services in the Schools.

This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

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

(3) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include licensed specialists in school psychology, and interns or trainees as defined in §463.9 of this title (relating to Licensed Specialist in School Psychology). Nothing in this rule prohibits public schools from contracting with licensed psychologists and licensed psychological associates who are not licensed specialists in school psychology to provide psychological services, other than school psychology, in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not readily available from the licensed specialist in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1)(B) of this section.An LSSP who contracts with a school district to provide school psychological services may not permit an individual who does not hold a valid LSSP to perform any of the contracted school psychological services.

(4) - (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 April 12, 2002.

TRD-200202240
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.8

The Texas State Board of Examiners of Psychologists proposes amendments to §470.8, concerning Informal Disposition of Complaints. The amendments are being proposed in order to clarify that the Disciplinary Review Panel cannot issue a default judgement against a licensee who does not appear at an informal conference and to make clear that informal conferences will occur in executive session in order to preserve the confidentiality of the ongoing investigation.

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

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

Comments on the proposals may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§470.8. Informal Disposition of Complaints

(a) Complaints.

(1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or dismissal in accordance with §§2001.056 of the Administrative Procedure Act.

(2) Prior to the imposition of disciplinary sanction(s) against a license, the licensee shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with §§2001.054(c) of the Administrative Procedure Act.

(3) Informal conferences shall be conducted by the Chair of the Disciplinary Review Panel. The conference shall also be attended by the designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director and legal counsel may deem necessary for proper conduct of the conference. The licensee and/or the licensee's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard and to present witnesses, affidavits, letters, reports, and any information deemed relevant for the Board's consideration in the matter. [~~Although the~~] The licensee's attendance and participation is voluntary [~~, the Committee may handle the matter as a default disposition if the licensee declines to attend or fails to appear at the informal conference~~].

(4) In any case where charges are based upon information provided by a person (complainant) who filed a complaint with the Board, the complainant may attend the informal conference. A complainant who chooses to attend an informal conference shall be provided an opportunity to be heard, at a time separate from the respondent, with regard to violations based upon the information provided by the complainant. Nothing herein requires a complainant to attend an informal conference.

(5) Informal conferences shall not be deemed meetings of the Board and no formal record of the proceedings at such conferences shall be made or maintained. Any informal record of conferences shall be made by mechanical or electronic means at the discretion of the Committee Chair.

(6) Any proposed consent order shall be presented to the Board for its review. At the conclusion of its review, the Board shall approve or disapprove the proposed consent order. Should the Board approve the proposed consent order, the appropriate notation shall be made in the minutes of the Board; and the proposed consent order shall be entered as an official action of the Board. Should no agreement be entered into, the Board may refer the matter to SOAH for a formal hearing.

(b) Confidentiality of Informal Settlement Conferences. The Panel may take any and all steps necessary to ensure the confidentiality of the informal settlement conference in accordance with §§501.205 of the Act , including but not limited to, conducting the entirety of the conference in executive session.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202241
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §470.11

The Texas State Board of Examiners of Psychologists proposes new Board rule §470.11, concerning Service in Non-Rulemaking Proceedings. The new rule is being proposed in order to clarify the appropriate form of service upon parties in contested case proceedings.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the rule.

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

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§470.11. Service in Non-Rulemaking Proceedings.

Where service of notice by the agency is required, all parties shall be notified either personally, by first class mail, or by certified mail, return receipt requested, to the party's last known mailing address as shown in Board records. If any party has appeared by attorney or other representative, service shall be made by the methods above upon such attorney or representative.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202242
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §470.18

The Texas State Board of Examiners of Psychologists proposes new Board rule §470.18, concerning The Record. The new rule is being proposed in order to clarify what the Board may appropriately consider in terms of evidence when hearing a contested case. The rule conforms to the requirements of the Administrative Procedure Act (Chapter 2001, Texas Government Code).

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

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

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§470.18. The Record.

The record in a contested case includes:

(1) all pleadings, motion, and intermediate rulings;

(2) evidence received or considered by the Board;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on these matters;

(5) proposed findings of fact and conclusions of law, as well as exceptions thereto;

(6) any decision, opinion, or report made by the Administrative Law Judge; and

(7) all staff memoranda or briefs submitted to or considered by the Administrative Law Judge or Board decision makers.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202244
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §470.20

The Texas State Board of Examiners of Psychologists proposes new Board rule §470.20, concerning Computation of Time. The new rule is being proposed in order to clarify how time is computed for purposes of deadlines which exist in the rest of Chapter 470, as well as other deadlines established by the State Office of Administrative Hearings and for proceedings under Chapter 2001 of the Texas Government Code (the Administrative Procedure Act).

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rules easier for the licensees and public to follow and understand. There will be no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§470.20. Computation of Time.
In computing time periods prescribed by these rules, or by order of the agency, the day of the act, event or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, in which case the time period will end on the next day that the agency is open.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202297
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §470.21

The Texas State Board of Examiners of Psychologists proposes amendments §470.21, concerning Disciplinary Guidelines. The amendments are being proposed in order to clarify that reprimands are not for specific periods of time, but are a one-time disciplinary action against a license.

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

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

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendments do not affect other statutes, articles, or codes.

§470.21. Disciplinary Guidelines.

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

(e) Disciplinary Sanctions. If the Board does not revoke the license of a licensee as part of a disciplinary matter, it may impose the following disciplinary sanctions which are listed in descending order of severity:

(1) Suspension for a definite period of time;

(2) Suspension plus probation of any or all of the suspension period;

(3) Probation of the license for a definite period of time;

(4) Reprimand [~~for a definite period of time~~].

(f) - (i) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202245
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.1, §473.2

The Texas State Board of Examiners of Psychologists proposes amendments to §473.1 Application Fees (Not Refundable) and 473.2 Examination Fees (Not Refundable). The amendments are being proposed in order to fulfill requirements of contingent revenue for Fiscal Year 2002-2003 appropriations for the Board. The amendments were previously adopted on an emergency basis to enable the agency to comply with House Bill 604 mandating an internal audit of the agency by the 77th Legislature.

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

Ms. Lee has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule will be to allow the agency to have sufficient revenue to function. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposals may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§473.1. Application Fees. (Not Refundable)

(a) Psychological Associate Licensure - $180 [~~$160~~]

(b) Provisionally Licensed Psychologist - $330 [~~$310~~]

(c) Licensure - $170 [~~$150~~]

(d) Reciprocity - $470 [~~$450~~]

(e) Licensed Specialist in School Psychology - $210 [~~$190~~]

§473.2. Examination Fees. (Not Refundable)

(a) (No change.)

(b) Jurisprudence - $210 [~~$200~~]

(c) Oral Examination - $320 [~~$300~~]

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202254
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §473.3

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

The Texas State Board of Examiners of Psychologists proposes the repeal of Board rule §473.3, concerning Annual Renewal Fees (Not Refundable). The repeal is being proposed in order to clarify fee changes in new Board rule §473.3.

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

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

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed repeal does not affect other statutes, articles, or codes.

§473.3. Annual Renewal Fees (Not Refundable).

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202246
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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22 TAC §473.3

The Texas State Board of Examiners of Psychologists proposes new Board rule §473.3, concerning Annual Renewal Fees (Not Refundable). The new rule is being proposed in order to comply with Texas Online fee determinations authorized by Senate Bill 187 and House Bill 645 passed by the 77th Legislature requiring on-line renewals and profiles of licensed psychologists.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow the agency to have sufficient revenue to function. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§473.3. Annual Renewal Fees (Not Refundable).

(a) Psychological Associate Licensure - $90

(b) Psychological Associate Licensure over the age of 70 - $15

(c) Provisionally Licensed Psychologist - $90

(d) Provisionally Licensed Psychologist over the age of 70 - $15

(e) Psychologist Licensure - $180

(f) Psychologist Licensure over the age of 70 - $15

(g) Psychologist with Health Service Provider Status - $20

(h) Psychologist with Health Service Provider status over the age of 70 - No Fee

(i) Licensed Specialist in School Psychology - $33

(j) Licensed Specialist in School Psychology over the age of 70 - $13

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202255
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Proposed date of adoption: September 1, 2002
For further information, please call: (512) 305-7700

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22 TAC §473.4

The Texas State Board of Examiners of Psychologists proposes amendments to §473.4, concerning Late Fees for Renewals (Not Refundable). The amendments are being proposed in order to comply with Texas Online fee determinations authorized by Senate Bill 187 and House Bill 645 passed by the 77th Legislature requiring on-line renewals and profiles of licensed psychologists.

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

Ms. Lee has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule will be to allow the agency to have sufficient revenue to function. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposals may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§473.4. Late Fees for Renewals (Not Refundable)

(a) (No change.)

(b) Licensed Specialists in School Psychology

(1) One day to ninety days - $105 [~~$100~~]

(2) Ninety-one days to less than one year - $210 [~~$200~~]

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202256
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 305-7700

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §533.38

The Texas Real Estate Commission (TREC) proposes an amendment to §533.38, concerning motions for rehearing, modification of order, or probation.

The amendment changes the procedures for filing a motion for rehearing before either a staff hearings officer or the members of the commission. Under current §533.38, a person requesting a rehearing must specify in the motion whether the person wishes the motion to be considered by and any rehearing to be before, the members of the commission. If the person requesting a rehearing does not specify that the motion be considered by the members of the commission, the motion for rehearing will default to the presiding officer. The amendment changes the default to the members of the commission in cases where the person requesting the hearing fails to specify or requests a hearing before either the presiding officer or the members of the commission.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay 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 a clarification of when a person will be permitted to a present a motion for rehearing before the members of the commission. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed 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.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§533.38. Motions for Rehearing, Modification of Order, or Probation.

(a) (No change.)

(b) [~~If the party filing the motion desires the motion to be considered by, and any rehearing to be before, the members of the commission, the party shall include in the motion a request for consideration by, and any rehearing to be before, the members of the commission.~~] A party shall submit the motion to either the presiding officer or to the members of the commission, as the case may be, for consideration and

appropriate action. A motion which requests action by the presiding officer, and in the alternative, action by the members of the commission, will be deemed a motion for consideration of the members of the commission [~~presiding officer~~] and treated accordingly. A motion that does not include an express request for consideration by the presiding officer [~~members of the commission~~] will be deemed to be a request for consideration by the members of the commission [~~a presiding officer~~], and if the party has filed a timely motion for rehearing to be considered by either the presiding officer or the members of the commission, the party need not file any additional motions for rehearing as a prerequisite for judicial review.

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

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

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.63

The Texas Real Estate Commission (TREC) proposes an amendment to §535.63, concerning education and experience requirements for a license. The amendment would conform the rule to the amendments to The Real Estate License Act made by House Bill 695, 77th Legislature (2001). House Bill 695 increases the number of hours of core real estate courses required for salesperson and broker applications. Effective with applications filed after December 31, 2001, an applicant for a broker license will be required to complete 18 semester (270 classroom) hours of core real estate courses, an increase of 90 core classroom hours over prior law.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay 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 the removal of a conflict with recent changes to section 7 of The Real Estate License Act, Article 6573a, Texas Civil Statutes. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.63. Education and Experience Requirements for a License.

(a) (No change.)

(b) Education and experience requirements for a broker license.

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

(4) [~~With respect to the education requirement of 60 semester hours in effect on or after January 1, 1985,~~] The [~~the~~] commission shall require not less than18 [~~12~~] semester hours (270 [~~180~~] classroom hours) in courses reflecting course titles or course descriptions in the real estate disciplines including, but not limited to, the statutory subject areas identified in the Act, §7(a) and §7(j). The commission will publish periodically guidelines as to the acceptability of related courses. Provided, however, that an applicant for a broker license who was licensed as a salesperson subject to the annual education requirements set forth in this Act must provide the commission satisfactory evidence of having completed18 [~~12~~] semester hours (270 [~~180~~] classroom hours) of core real estate courses[~~that would have been required for the applicant's third annual renewal of a salesperson license~~].

(c) (No change.)

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

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22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes an amendment to §535.65, concerning changes in ownership or operation of school; presentation of courses, advertising, and records. The amendment would permit accredited real estate schools to request MCE credit to be given to instructors of real estate core courses subject to certain restrictions. This amendment is similar to §535.72(m) which permits continuing education providers to request MCE credit to be given to MCE instructors.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small

businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay 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 an enhancement of the educational process for schools and instructors. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.

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

(d) Instructors.

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

(5) Schools may request MCE credit be given to instructors of real estate core courses subject to the following guidelines.

(A) The instructors may receive credit for only those portions of the course which they teach.

(B) The instructors may receive full course credit by attending all of the remainder of the course.

(e)-(j) (No change.)

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

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to §535.101, concerning fees paid by licensees and applicants.

The amendments to subsections 535.101(b)(2) and (b)(4) are proposed in connection with the passage of S.B. 645 and S.B. 187 by the 77th Legislature (2001), requiring TREC to participate in an electronic system using the Internet for licensing. S.B. 645 requires TREC to participate in the electronic licensing system and pay a subscription fee to the TexasOnline Authority for participation. S.B. 187 requires TREC to increase renewal fees to cover the cost of the subscription fees charged by the TexasOnline Authority. Section 535.101 would be amended to reflect the fees that would be effective for broker and salesperson renewals for licenses expiring on or after September 1, 2002.

The amendment to subsection 535.101(b)(5) is necessary to cover the increased cost of providing licensing examination services for TREC by an independent contractor.

Alan Waters, staff services director, has determined that for the first five-year period subsections 535.101(b)(2) and (b)(4) are in effect there will be fiscal implications for the state. Revenue from fees received for broker and salesperson renewals is anticipated to increase $201,500.00 for Fiscal Year 2003 and for each year of the five year period following adoption of the amendment. No fiscal implications are anticipated for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Loretta R. DeHay, general counsel, 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 conforming TREC rules with statutory changes and enhanced licensing examination services. The anticipated economic cost to persons who are required to comply with the proposed section is an additional $3.50 fee for a broker annual renewal, $1.50 fee for salesperson annual renewal, and $24 for a license examination.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed 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.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) (No change.)

(2) a fee of $33.50 [~~$30~~] for annual renewal of a real estate broker license;

(3) (No change.)

(4) a fee of $31.50 [~~$30~~] for annual renewal of a real estate salesperson license;

(5) a fee of $59 [~~$35~~] for an application for a license examination;

(6)-(13) (No change.)

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) proposes amendments to §535.210, concerning fees paid by real estate inspector licensees and applicants.

The amendments to subsections 535.210(a)(4) through (6) are proposed in connection with the passage of S.B. 645 and S.B. 187 by the 77th Legislature (2001), requiring TREC to participate in an electronic system using the Internet for licensing. S.B. 645 requires TREC to participate in the electronic licensing system and pay a subscription fee to the TexasOnline Authority for participation. S.B. 187 requires TREC to increase renewal fees to cover the cost of the subscription fees charged by the TexasOnline Authority. Section 535.210 would be amended to reflect the fees that would be effective for all inspector license renewals for licenses expiring on or after January 1, 2003.

The amendment to subsection 535.210(a)(7) is necessary to cover the increased cost of providing licensing examination services for TREC by an independent contractor.

Alan Waters, staff services director, has determined that for the first five-year period subsections 535.210(a)(4) through (a)(6) are in effect there will be fiscal implications for the state. Revenue from fees received for apprentice inspector, real estate inspector, and professional inspector renewals is anticipated to increase $4,200.00 for Fiscal Year 2003 and for each year of the five year period following adoption of the amendment. No fiscal implications are anticipated for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Loretta R. DeHay, general counsel, 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 conforming TREC rules with statutory changes and enhanced licensing examination services. The anticipated economic cost to persons who are required to comply with the proposed section is an additional $2 fee for apprentice inspector, real estate inspector, and professional inspector renewals and $24 for a license examination.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed 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.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.210. Fees.

(a) The commission shall charge and collect the following fees:

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

(4) a fee of $22 [~~$20~~] for the annual renewal of the license of an apprentice inspector;

(5) a fee of $27 [~~$25~~] for the annual renewal of the license of a real estate inspector;

(6) a fee of $27 [~~$25~~] for the annual renewal of the license of a professional inspector;

(7) a fee of $59 [~~$35~~] for taking a license examination;

(8)-(10) (No change.)

(b) (No change.)

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

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22 TAC §535.218

The Texas Real Estate Commission (TREC) proposes an amendment to §535.218, concerning continuing education. The amendment would permit inspector core and continuing education providers to request continuing education credit to be given to instructors of core real estate inspection courses subject to certain restrictions. This amendment is similar to §535.72(m) which permits continuing education providers to request MCE credit to be given to MCE instructors.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay 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 an enhancement of the educational process for instructors. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.218. Continuing Education.

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

(g) providers may request continuing education credit be given to instructors of core real estate inspection courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach.

(2) The instructors may receive full course credit by attending all of the remainder of the course.

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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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

The Texas Department of Insurance proposes amendments to §11.2 concerning definitions relating to health maintenance organization (HMO) telehealth services and telemedicine medical services and physician and provider credentialing; §11.1607 concerning accessibility and availability requirements for HMOs providing telemedicine medical services and telehealth services; and §§11.1901-11.1902 concerning quality improvement programs operated by HMOs, including credentialing and recredentialing of physicians and providers. The amendments to §11.2 provide definitions necessary to implement Senate Bill 544 (Acts 2001, 77th Leg., ch. 1369, §2, eff. Sept. 1, 2001), which enacted Insurance Code Article 20A.39 relating to credentialing of physicians and providers and Senate Bill 789 (Acts 2001, 77th Leg. ch. 1255, §§5-9, eff. June 15, 2001) which amended the Insurance Code Article 21.53F relating to telemedicine and telehealth services. The amendments to §11.1607 are necessary to clarify the applicability of subsections (i)-(k) to both telehealth services and telemedicine medical services as a result of the enactment of Senate Bill 789. The amendments to §§11.1901 and 11.1902 are necessary to reorganize, clarify, and eliminate redundancy in the current requirements and procedures in these sections, for quality improvement programs operated by HMOs. Section 11.1903, relating to the operation and responsibilities of an HMO quality improvement committee, is proposed for repeal; the proposed repeal is published elsewhere in this issue of the *Texas Register*. Additionally, the amendments to §11.1902(4) and (5) propose standards necessary to implement Senate Bill 544 which specifies guidelines and standards for rules adopted under the Insurance Code Article 20A.37 that regulate implementation and maintenance of HMO credentialing, the process for selecting and retaining affiliated physicians and providers. Article 20A.37 requires each HMO to have an ongoing internal quality assurance program to monitor and evaluate its health care services in all institutional and noninstitutional contexts and authorizes the Commissioner to establish, by rule, minimum standards and requirements for these programs, including, but not limited to, standards for assuring availability, accessibility, quality and continuity of care.

The proposed amendments to §11.2 clarify that credentialing is the process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or provider to determine eligibility to deliver health care services. They also delete the reference to "dentist" in the definition of credentialing and clarify, in the definition of dentist, that a dentist is an individual provider. These changes are consistent with other proposed clarification changes in §§11.1901-11.1902 to include dentists as individual providers in the proposed rules. The proposed amendments also add definitions for individual provider, institutional provider, recredentialing, telehealth service and telemedicine medical services and delete the definition of credentials because it is not necessary.

The proposed amendments to §11.1607(i)-(k) clarify that the current requirements and criteria that apply to an HMO's provision of telemedicine shall also apply to telehealth services, including that each evidence of coverage delivered or issued for delivery by an HMO may provide enrollees the option to access covered health care services through a telehealth service or a telemedicine medical service. The proposed amendments also change the term "telemedicine" to "telemedicine medical services" for consistency with the Insurance Code Article 21.53F as enacted by Senate Bill 789.

In accordance with Senate Bill 544, amendments to §11.1902(4) and (5) propose standards for credentialing and recredentialing of physicians and providers that are in compliance with the standards in the Insurance Code Article 20A.39 and with standards of the National Committee for Quality Assurance (NCQA), to the extent that the NCQA standards do not conflict with other laws of this state. The NCQA is an independent nonprofit organization that uses performance measures to assess and accredit managed care organizations, including HMOs. The amendments propose standards for credentialing policies and procedures for physicians, individual providers, and institutional providers, including initial and recredentialing primary source verification; the credentialing application; initial and recredentialing sanction information; initial credentialing site visits; performance monitoring; ongoing monitoring of sanctions and complaints; notification to appropriate authorities of actions taken against a physician or provider and physician and provider appeal rights; initial and ongoing assessment of institutional providers; and delegation of credentialing; and uniform requirements and guidelines for HMOs conducting site visits for cause.

Throughout the proposed amendments to §§11.1901-11.1902, two changes are proposed for clarification and simplification with no substantive changes to the current rules: (i) deletion of references to the term "dentists" because the proposed definitions of both of the terms "dentist" and "individual provider," as well as the definition of "provider" in the Insurance Code Article 20A.02(t), result in dentists being included as "individual providers" in the proposed rules; and (ii) specification of "individual providers" and

"institutional providers" as appropriate. Also, wherever the current provisions of §11.1903 are incorporated into §§11.1901-11.1902, or current provisions of §§11.1901-11.1902 are reorganized, the current wording is revised in some instances for purposes of clarification and deletion of redundancy and to reflect the Department's interpretation of current rules.

The proposed amendments to §11.1901 incorporate the various provisions of §§11.1902(8)(B) and 11.1903 relating to the responsibilities of the HMO governing body to receive and review reports on the quality improvement program, including the delegation of quality improvement activities and the use of multidisciplinary teams by the quality improvement committee.

The proposed amendments to §11.1902 clarify that the HMO shall dedicate adequate resources to the quality improvement program, incorporate current §11.1902(2)(C) and clarify that the HMO shall continuously update and monitor the quality improvement program.

The proposed amendments to §11.1902(2) clarify that an annual quality improvement work plan shall include a schedule of activities designed to reflect the population served by the HMO in terms of age groups, disease categories, and special risk status; that an annual quality improvement work plan shall include goals, objectives, and planned projects or activities identified from the previous year, as well as for the current year; time frames for implementation; individuals responsible; and coordination of functions; and what the HMO must include in the annual quality improvement work plan to monitor quality improvement, including objective and measurable quality indicators, process or outcome performance measurements, and data appropriate to the goals and objectives of the activity.

The proposed amendments to §11.1902(2)(C) clarify that the annual quality improvement work plan shall include ongoing or periodic assessment of both quality of care and quality of service in planned projects and specifies what is to be assessed, including network adequacy; continuity of health care and related services; clinical studies; the adoption and annual updating of clinical practice guidelines or clinical care standards; enrollee, physician, and individual provider satisfaction; the complaint and appeal process and complaint data and identification and removal of communication barriers which may impede effective making of complaints against the HMO; preventive health care through promotion and outreach activities; the claims payment processes; contract monitoring, and utilization review processes. Proposed §11.1902(2)(C)(viii) relating to claims payment processes and §11.1902(2)(C)(ix) relating to contract monitoring are included to clarify the general requirement in current §§11.1901-11.1903 regarding a comprehensive quality improvement program and to assess compliance with the Insurance Code Article 20A.18B and 28 TAC §§21.2801-21.2820, which provide guidelines and requirements for the prompt payment of physicians and providers, and the Insurance Code Article 20A.18C related to the delegation of certain functions by HMOs and the monitoring of these delegated functions.

Proposed §11.1902(2)(D) incorporates current §11.1903(G)(i)-(ii) and clarifies that the annual quality improvement work plan shall include ongoing or periodic analysis and evaluation of both quality of clinical care and quality of service in planned projects specified in §11.1902(2)(C).

The proposed amendments to §11.1902(3) incorporate current §11.1903(2)(H)(i)-(ii) and clarify that there shall be an annual written evaluation report on the quality improvement program that includes completed activities, trending of clinical and service indicators, analysis of program performance, conclusions, and demonstrated improvements in care and services.

Most of the proposed amendments to §11.1902(4) are for the purpose of bringing current physician and provider HMO credentialing standards into compliance with the standards in the Insurance Code Article 20A.39 and with NCQA standards, to the extent that the NCQA standards do not conflict with other laws of this state. In compliance with NCQA standards (CR 1.8), proposed §11.1902(4)(A) requires that HMO policies and procedures clearly indicate the physician or provider responsible for the credentialing program. The proposed amendments to §11.1902(4)(B) are for clarification and readability purposes and, consistent with the NCQA standards (CR 1), require written criteria for credentialing of physicians and providers and written procedures for verification. Current §11.1902(5)(A)(ii), relating to annual evaluation of credentialing policies and procedures, is deleted because it is not consistent with NCQA standards.

Current §11.1902(5)(A)(iii) is redesignated as §11.1902(4)(B)(ii) and §11.1902(4)(B)(iii) and amended to clarify who is required and not required to be credentialed. In accordance with NCQA standards (CR 1.1), the only substantive change to the current rule is that pharmacists have been added to those who are not required to be credentialed. Both the current rule and the proposed rule require all dentists to be credentialed, including those who provide dental care only under a dental plan or rider. Insurance Code Articles 20A.03(c) and 20A.37 authorize the Department to regulate dental HMOs, including credentialing of contracted dentists, and the NCQA standards in this instance conflicts with the other laws of this state. Under the Insurance Code Article 20A.39(a), rules adopted by the Commissioner that relate to an HMO's credentialing of physicians and providers are not required to comply with NCQA standards if those standards conflict with other laws of this state. Both the current rule and the proposed rule require advanced practice nurses (APNs) and physicians' assistants (PAs) to be credentialed. The NCQA standards do not specifically include or exclude APNs and PAs from credentialing requirements. However, APNs and PAs meet the NCQA definition of practitioners who have an independent relationship with the managed care organization. Additionally, under the Insurance Code Article 20A.02(t), APNs and PAs are considered "providers." The Insurance Code Article 20A.14(j) provides that if an APN or PA is statutorily authorized to provide care by a physician participating in an HMO's provider network, the HMO may not refuse to contract with an APN or PA to be included in the HMO's provider network, refuse to reimburse the APN or PA for covered services, or otherwise discriminate against the APN or PA solely because the APN or PA is not identified as a practitioner under the Insurance Code Article 21.52, §3.

Current §11.1902(4)(A)(v) is deleted because the six months verification time limit is incorporated into the proposed rules where appropriate and the two-year site visit verification time limit is not consistent with NCQA standards. Current §11.1902(5)(A)(vii), which requires recredentialing of physicians and individual providers every two years and requires HMOs to maintain documentation of current state licensure, is deleted because the requirements do not comply with NCQA standards or with the Insurance Code Article 20A.39(d). Proposed §11.1902(4)(B)(vi), consistent with NCQA standards (CR 10), specifies procedures for monitoring physician and provider performance between periods of recredentialing.

Current §11.1902(5)(A)(viii) is redesignated as §11.1902(4)(B)(vii) and proposed to be amended to comply with NCQA standards (CR 13) on delegation of credentialing, including required annual audits and exceptions and the requirement that the HMO maintain the right to approve credentialing, suspension, and termination of physicians and providers. The proposed amendments to §11.1902(5)(B)(vii) also clarify that credentialing files maintained by other entities to whom the HMO has delegated credentialing functions be made available to the Department for examination upon request, which is in accordance with the Insurance Code Article 20A.17(b)(4).

Current §11.1902(5)(A)(x) is redesignated as §11.1902(4)(B)(ix) and amended for clarity and compliance with NCQA standards (CR 11) on HMO procedures for notifying appropriate authorities when a physician's or provider's affiliation is suspended or terminated due to quality of care concerns.

Current §11.1902(5)(B)(i) is redesignated as §11.1902(4)(C)(i) and amended to require that physicians complete the standardized credentialing application adopted in 28 TAC §21.3201; the proposal for §21.3201 is published elsewhere in this issue of the *Texas Register*. Proposed amendments to §11.1902(4)(C)(i) also provide that HMOs are not precluded from using the standardized credentialing application form specified in §21.3201 for individual providers and provide, in compliance with NCQA standards (CR 4), that the completion date on the credentialing application shall be within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing.

Current §11.1902(5)(B)(ii)(I) is redesignated as §11.1902(4)(C)(ii)(I) and amended to provide that, in compliance with NCQA standards (CR 3.1), the license and sanctions must be verified within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing and the license must be in effect at the time of the credentialing decision.

Current §11.1902(5)B)(ii)(II), relating to requirements for clinical privileges, is deleted because it does not comply with NCQA standards. Current §11.1902(5)(B)(ii)(III), relating to education and training, is redesignated as §11.1902(4)(C)(ii)(II) and amended to provide, consistent with NCQA standards (CR 3.3), that if a specialty board verifies education and training, evidence of board certification shall also serve as a primary source verification of education and training. Current §11.1902(5)(B)(ii)(IV), relating to board certification, is redesignated as §11.1902(4)(C)(ii)(III) and amended to provide, in compliance with NCQA standards (CR 3.4), that the source used must be the most recent available. Current §11.1902(5)(B)(iii)(III), relating to Drug Enforcement Agency and Department of Public Safety Controlled Substances permits, is included in proposed §11.1902(4)(C)(ii)(IV) and amended to comply with NCQA standards (CR 3.2).

In accordance with NCQA standards (CR 3.6), amendments are proposed to §11.1902(4)(C)(iii)(I) to require professional liability claims history to be verified within 180 days prior to the date of the credentialing decision and to be obtained from the professional liability carrier or the National Practitioner Data Bank. In accordance with NCQA standards (CR 5.3), amendments are proposed to §11.1902(4)(C)(iii)(II) to require information on previous sanction activity by Medicare and Medicaid to be verified within 180 days prior to the date of the credentialing decision and to specify seven possible sources, including the National Practitioner Data Bank.

Current §11.1902(5)(B)(iv) is redesignated as §11.1902(4)(C)(iv) and amended, in accordance with NCQA standards (CR 6), to require initial credentialing site visits to each obstetrician-gynecologist and high-volume individual behavioral health provider and to allow one site visit in specified instances of group practice situations. Current §11.1902(5)(B)(v) is redesignated as §11.1902(4)(C)(v) and amended, in accordance with the Insurance Code Article 20A.39(c), to require that site visit evaluations consist of appointment availability. Proposed amendments to §11.1902(4)(C)(v) also provide that if a physician or individual provider offers services such as radiology or laboratory services that require certification or licensure in accordance with the Insurance Code Article 20A.39(b), the current certification or licensure must be available for review at the initial credentialing site visit. In accordance with NCQA standards (CR 6), proposed amendments to §11.1902(4)(C)(v) require corrective action plans and follow-up site visits every six months until the site meets the HMO's standards.

Current §11.1902(5)(C) is redesignated as §11.1902(4)(D) and amended, in accordance with the Insurance Code Article 20A.39(d)(1), to require HMOs to recredential physicians and individual providers at least once every three years. Proposed amendments to §11.1902(4)(D), in accordance with NCQA standards (CR 9), require HMOs to consider performance indicators for primary care and high-volume individual behavioral health care providers in recredentialing decision making. Proposed amendments to §11.1902(5)(D)(i)-(ii), in accordance with NCQA standards (CR 7), require reverification from specified primary sources and in accordance with the verification time limit for the initial credentialing process in proposed §11.1902(4)(C), and delete the current §11.1902(5)(C)(iii) requirements for recredentialing site visits for primary care physicians and high-volume physicians and providers and multi-practitioners every two years.

Current §11.1902(5)(D) is redesignated as §11.1902(4)(E) and amended in §11.1902(4)(E)(i)-(v), in accordance with NCQA standards (CR 12), to specify the credentialing process for institutional providers, including on-site evaluation of the institutional provider against the HMO's written standards if the provider is not accredited by the HMO-required national accrediting body. Recredentialing of institutional providers at least every three years, is addressed in proposed §11.1902(4)(F). Proposed §11.1902(4)(F) also provides, in accordance with NCQA standards (CR 12.5), that the recredentialing process shall update information obtained for initial credentialing.

Proposed §11.1902(4)(G), in accordance with the Insurance Code Article 20A.39(a), provides that if the NCQA standards change and there is a difference between the Department's promulgated standards and the NCQA standards, that the NCQA standards shall prevail to the extent those standards do not conflict with the other laws of this state.

Proposed §11.1902(5)(A), in accordance with NCQA standards (CR 6.7), requires the HMO to have procedures for detecting deficiencies subsequent to the initial site visit and to reevaluate the site and institute actions for improvement when the HMO identifies new deficiencies. Proposed §11.1902(5)(B), in accordance with the Insurance Code Article 20A.39(e), specifies the requirements and guidelines for HMOs conducting site visits for cause.

These amendments are proposed to be effective July 1, 2002, with the standardized credentialing application form for physicians required in §11.1902(4)(C)(i) to be used for initial credentialing or recredentialing that occurs on or after July 1, 2002.

Kimberly Stokes, Senior Associate Commissioner, Life/Health/Licensing, has determined that during the first five years the proposed amendments will be in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed amendments. There will be no measurable effect on local employment or the local economy as a result of administering or enforcing the proposed amendments.

Ms. Stokes has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the adoption of the amendments to §11.1607(i)-(k) are updated rules consistent with the Insurance Code Article 21.53F as amended by Senate Bill 789, clarification of the information to be provided to the enrollee on the evidence of coverage regarding the enrollee's ability to access covered telehealth services and telemedicine medical services, and promotion of awareness of the telemedicine medical services and telehealth services coverage that may be provided by the HMO. The public benefits anticipated as a result of the adoption of the proposed amendments to §11.1901 and §11.1902 are clarified and better organized operational procedures and standards for HMO governing bodies and quality improvement programs, which are easier to understand and follow. These amendments can also assist HMOs in earlier identification of potential problem areas, such as network adequacy, continuity of care, and claims payments, thereby enabling the HMO to address such problems before they become major and adversely affect the care provided to enrollees. The additional public benefits anticipated as a result of the adoption of the amendments to §11.1902(4) and (5)(A) are Department standards for credentialing of physicians and providers that are consistent with NCQA standards. This will result in greater efficiency and lower administrative costs for those HMOs that are NCQA accredited because they will be required to comply with only one set of credentialing standards. This will also result in lower administrative costs for all HMOs because credentialing of physicians and individual providers will be required every three years, instead of every two years as required under the current rules, and because site visits for primary care physicians and high-volume physicians and providers will no longer be required at recredentialing. These lower administrative costs may also help keep premium costs down because costs to operate the HMOs are used in determining the premium charged to enrollees. In addition, while the proposed rules require HMOs to have a method of verifying licensure and sanctions during the three years between recredentialing, the HMOs will no longer be required to verify licensure prior to or on the expiration date of the license. As a result, each HMO will be able to design a credentialing process that best fits its organizational and economic needs. Also, the three-year recredentialing cycle for physicians and individual providers and the required use of the standardized credentialing application for physicians and the permissive use of this application for individual providers will result in a more efficient and less time-consuming credentialing process. The public benefits anticipated as a result of the adoption of proposed §11.1902(5)(B) are updated rules consistent with the Insurance Code Article 20A.39(e); specification of uniform requirements and guidelines for HMOs conducting site visits for cause; and earlier identification and correction of quality of care problems, including those related to patient safety, accessibility, and appointment availability.

Any economic costs required to comply with the proposed amendments to §11.1607(i)-(k), are the direct result of the legislative enactment of Senate Bill 789. Any economic costs required to comply with the proposed amendments to §11.1902(4) and §11.1902(5) are the direct result of the legislative enactment of Senate Bill 544, and the directive in the Insurance Code Article 20A.39(a) that the rules adopted by the Commissioner under the Insurance Code Article 20A.37 that relate to an HMO's process for selecting and retaining affiliated physicians and providers comply with NCQA standards, to the extent those standards do not conflict with other laws of this state, and with the standards enacted in the Insurance Code Article 20A.39. There are no additional costs anticipated to persons or entities who are required to comply with the proposed amendments to §11.2 and to §§11.1901-11.1902(1)-(3) and (6) that reorganize, clarify, and delete redundancy in current §§11.1901-11.1903.

Ms. Stokes has determined that there is no adverse economic effect on any HMO that qualifies as a small business or micro-business under the Government Code §2006.001, as a result of the proposed amendments. All of the economic costs to any small business or micro-business HMO required to comply with the proposed amendments to §11.1607(i)-(k) are the direct result of the legislative enactment of Senate Bill 789; in addition, the provision of covered health care services through a telehealth service or a telemedicine medical service is at the option of the HMO and such costs are included in the premium costs paid by the enrollees. The determining factors in the costs that would be incurred by an HMO in complying with the proposed amendments to §11.1607(i)-(k) are whether the HMO opts to provide the telehealth or telemedicine medical services and are not related to the size of the HMO. All of the economic costs to any small business or micro-business HMO required to comply with the proposed amendments to §11.1902(4) and (5)(A) are the direct result of the legislative enactment of Senate Bill 544, and its directive that the rules adopted by the Commissioner under the Insurance Code Article 20A.37 that relate to an HMO's process for selecting and retaining affiliated physicians and providers comply with NCQA standards, to the extent those standards do not conflict with other laws of this state, and with the standards enacted in the Insurance Code Article 20A.39. The determining factors in the costs that would be incurred by an HMO in complying with the proposed amendments to §11.1902(4) and (5)(A) are not related to the size of the entity, but rather to the implementation and maintenance of the HMO's quality improvement program, including the credentialing and recredentialing of physicians and providers, which all HMOs, regardless of size, are required by the Insurance Code Article 20A.37 to implement and maintain. All of the economic costs required to comply with proposed §11.1902(5)(B) are the direct result of the legislative enactment of Insurance Code Article 20A.39(e) in Senate Bill 544. The determining factors in the costs that would be incurred by an HMO in complying with the proposed amendments to §11.1902(5)(B) are not related to the size of the HMO, but rather to the number of physician and provider offices for which site visits for cause are required. Therefore, the size of the HMO has no bearing upon the applicability of any of the proposed amendments. Because of this; the intent of Senate Bill 544 to bring Texas standards for credentialing physicians and providers into compliance with the NCQA standards; the intent of the Insurance Code Article 20A.39(e)

that all HMOs, regardless of size, not be precluded from conducting a site visit to the office of any physician or provider at any time for cause; and the intent of the Insurance Code Article 20A.37 that all HMOs, regardless of size, implement and maintain a quality assurance program, it is neither legal nor feasible to exempt small business or micro-business HMOs from the requirements of the proposed amendments. Additionally, because the provision of telehealth services and telemedicine medical services is at the option of the HMO, it is not necessary to exempt small business or micro-business HMOs from the requirements of the proposed amendments to §11.1607(i)-(k).

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 27, 2002 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Margaret Lazaretti, Director of Project Development, Life/Health/Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §11.2

The amendments are proposed pursuant to the Insurance Code Articles 20A.39, 20A.37, 21.58D, and §36.001. Article 20A.39(a) requires the rules adopted under Article 20A.37 that relate to implementation and maintenance by an HMO of a process for selecting and retaining affiliated physicians and providers to comply with the provisions of new Article 20A.39 and the standards promulgated by the National Committee for Quality Assurance, to the extent that those standards do not conflict with other laws of this state. Article 20A.37(b) requires each HMO to have an ongoing internal quality assurance program to monitor and evaluate its health care services in all institutional and noninstitutional contexts and authorizes the Commissioner to establish, by rule, minimum standards and requirements for these programs, including, but not limited to, standards for assuring availability, accessibility, quality and continuity of care. Article 21.58D requires the Commissioner by rule to adopt a standardized form for the verification of the credentials of a physician and to require HMOs operating under the Insurance Code Chapter 20A to use the form. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by the proposal: Insurance Code Articles 21.53F and 20A.39, 20A.37, 21.58D

§11.2. Definitions.

(a) (No change.)

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

(1) - (13) (No change.)

(14) Credentialing--The process of collecting, assessing, and validating [~~review of~~] qualifications and other relevant information pertaining to a physician[~~, dentist,~~] or provider to determine eligibility to deliver health care services [~~who seeks a contract with an HMO~~].

(15) [~~Credentials--Certificates, diplomas, licenses or other written documentation which verifies proof of training, education, and experience in a field of expertise.~~]

[~~(16)~~] Dentist--An individual provider licensed to practice dentistry by the Texas State Board of Dental Examiners.

(16) [~~(17)~~] General hospital--A licensed establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(17) [~~(18)~~] HMO--A health maintenance organization as defined in Insurance Code Article 20A.02(n).

(18) [~~(19)~~] Health status related factor--Any of the following in relation to an individual:

(A) health status;

(B) medical condition (including both physical and mental illnesses);

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability (including conditions arising out of acts of domestic violence, including family violence as defined by the Insurance Code Article 21.21-5); or

(H) disability.

(19) Individual provider--Any person, other than a physician or institutional provider, who is licensed or otherwise authorized to provide a health care service. Includes, but is not limited to, licensed doctor of chiropractic, dentist, registered nurse, advanced practice nurse, physician assistant, pharmacist, optometrist, registered optician, and acupuncturist.

(20) Institutional provider--A provider that is not an individual. Includes any medical or health related service facility caring for the sick or injured or providing care or supplies for other coverage which may be provided by the HMO. Includes but is not limited to:

(A) General hospitals,

(B) Psychiatric hospitals,

(C) Special hospitals,

(D) Nursing homes,

(E) Skilled nursing facilities,

(F) Home health agencies,

(G) Rehabilitation facilities,

(H) Dialysis centers,

(I) Free-standing surgical centers,

(J) Diagnostic imaging centers,

(K) Laboratories,

(L) Hospice facilities,

(M) Infusion services centers,

(N) Residential treatment centers,

(O) Community mental health centers,

(P) Urgent care centers, and

(Q) Pharmacies.

(21) [~~(20)~~] Limited provider network--A subnetwork within an HMO delivery network in which contractual relationships exist between physicians, certain providers, independent physician associations and/or physician groups which limit the enrollees' access to only the physicians and providers in the subnetwork.

(22) [~~(21)~~] Limited service HMO--An HMO which has been issued a certificate of authority to issue a limited service health care plan as defined in the Insurance Code Article 20A.02(l).

(23) [~~(22)~~] Out of area benefits--Benefits that the HMO covers when its enrollees are outside the geographical limits of the HMO service area.

(24) [~~(23)~~] Pathology services--Services provided by a licensed laboratory which has the capability of evaluating tissue specimens for diagnoses in histopathology, oral pathology, or cytology.

(25) [~~(24)~~] Pharmaceutical services--Services, including dispensing prescription drugs, as defined in the Pharmacy Act, Texas Civil Statutes, Article 4542a-1, §5 that are ordinarily and customarily rendered by a pharmacy or pharmacist.

(26) [~~(25)~~] Pharmacist--An individual provider licensed to practice pharmacy under the Pharmacy Act, Texas Civil Statutes, Article 4542a-1.

(27) [~~(26)~~] Pharmacy--A facility licensed under the Pharmacy Act, Texas Civil Statutes, Article 4542a-1 §29.

(28) [~~(27)~~] Premium--The prospectively determined rate that is paid by or on behalf of an enrollee for specified health services.

(29) [~~(28)~~] Primary care physician or primary care provider--A physician or individual provider who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(30) [~~(29)~~] Primary HMO--An HMO that contracts directly with, and issues an evidence of coverage to, individuals or organizations to arrange for or provide a basic, limited, or single health care service plan to enrollees on a prepaid basis.

(31) [~~(30)~~] Provider HMO--An HMO that contracts directly with a primary HMO to provide or arrange to provide health care services on behalf of the primary HMO within the primary HMO's defined service area.

(32) [~~(31)~~] Psychiatric hospital--A licensed hospital which offers inpatient services, including treatment, facilities and beds for use beyond 24 hours, for the primary purpose of providing psychiatric assessment and diagnostic services and psychiatric inpatient care and treatment for mental illness. Such services must be more intensive than room, board, personal services, and general medical and nursing care. Although substance abuse services may be offered, a majority of beds must be dedicated to the treatment of mental illness in adults and/or children.

(33) [~~(32)~~] Qualified HMO--An HMO which has been federally approved under Title XIII of the Public Health Service Act, Public Law 93-222, as amended.

(34) [~~(33)~~] Quality improvement--A system to continuously examine, monitor and revise processes and systems that support and improve administrative and clinical functions.

(35) Recredentialing--The periodic process by which:

(A) qualifications of physicians and providers are reassessed;

(B) performance indicators, including utilization and quality indicators, are evaluated; and

(C) continued eligibility to provide services is determined.

(36) [~~(34)~~] Reference laboratory--A licensed laboratory that accepts specimens for testing from outside sources and depends on referrals from other laboratories or entities. HMOs may contract with a reference laboratory to provide clinical diagnostic services to their enrollees.

(37) [~~(35)~~] Reference laboratory specimen procurement services--The operation utilized by the reference laboratory to pick up the lab specimens from the client offices or referring labs, etc. for delivery to the reference laboratory for testing and reporting.

(38) [~~(36)~~] Referral specialists (other than primary care)--Physicians or individual providers who set themselves apart from the primary care physician or primary care provider through specialized training and education in a health care discipline.

(39) [~~(37)~~] Schedule of charges--Specific rates or premiums to be charged for enrollee and dependent coverages.

(40) [~~(38)~~] Service area--A geographic area within which direct service benefits are available and accessible to HMO enrollees who live, reside or work within that geographic area and which complies with §11.1606 of this title (relating to Organization of an HMO).

(41) [~~(39)~~] Single service HMO--An HMO which has been issued a certificate of authority to issue a single health care service plan as defined in the Insurance Code Article 20A.02(y).

(42) [~~(40)~~] Special hospital--A licensed establishment that:

(A) offers services, facilities and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(43) [~~(41)~~] Statutory surplus--Admitted assets minus accrued uncovered liabilities.

(44) [~~(42)~~] Subscriber--If conversion or individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the HMO; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in the HMO.

(45) [~~(43)~~] Subsidiary--An affiliate controlled by a specified person directly or indirectly through one or more intermediaries.

(46) Telehealth service--As defined in Section 57.042, Utilities Code.

(47) [~~(44)~~] Telemedicine medical service--As defined in Section 57.042, Utilities Code [~~the Insurance Code Article 21.53F~~].

(48) [~~(45)~~] Urgent care--Health care services provided in a situation other than an emergency which are typically provided in a setting such as a physician or individual provider's office or urgent care center, as a result of an acute injury or illness that is severe or painful enough to lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, illness, or injury is of such a nature that failure to obtain treatment within a reasonable period of time would result in serious deterioration of the condition of [~~or~~] his or her health.

(49) [~~(46)~~] Utilization review--A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Utilization review shall not include elective requests for clarification of coverage.

(50) [~~(47)~~] Voting security--As defined in the Insurance Code Article 21.49-1, including any security convertible into or evidencing a right to acquire such security.

(51) [~~(48)~~] NAIC--National Association of Insurance Commissioners.

(52) [~~(49)~~] Annual financial statement--The annual statement to be used by HMOs, as promulgated by the NAIC and as adopted by the commissioner under Insurance Code Articles 1.11 and 20A.10.

(53) [~~(50)~~] RBC--Risk-based capital.

(54) [~~(51)~~] RBC formula--NAIC risk-based capital formula.

(55) [~~(52)~~] Authorized control level--The number determined under the RBC formula in accordance with the RBC instructions.

(56) [~~(53)~~] RBC Report--1999 NAIC Managed Care Organizations Risk-Based Capital Report including Overview and Instructions for Companies published by the NAIC.

(57) [~~(54)~~] Total adjusted capital--An HMO's statutory capital and surplus/total net worth as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed pursuant to the Insurance Code, and such other items, if any, as the RBC instructions provide.

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

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

TRD-200202330
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6327

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SUBCHAPTER Q. OTHER REQUIREMENTS

28 TAC §11.1607

The amendments are proposed pursuant to the Insurance Code Articles 20A.39, 20A.37, 21.58D, and §36.001. Article 20A.39(a) requires the rules adopted under Article 20A.37 that relate to implementation and maintenance by an HMO of a process for selecting and retaining affiliated physicians and providers to comply with the provisions of new Article 20A.39 and the standards promulgated by the National Committee for Quality Assurance, to the extent that those standards do not conflict with other laws of this state. Article 20A.37(b) requires each HMO to have an ongoing internal quality assurance program to monitor and evaluate its health care services in all institutional and noninstitutional contexts and authorizes the Commissioner to establish, by rule, minimum standards and requirements for these programs, including, but not limited to, standards for assuring availability, accessibility, quality and continuity of care. Article 21.58D requires the Commissioner by rule to adopt a standardized form for the verification of the credentials of a physician and to require HMOs operating under the Insurance Code Chapter 20A to use the form. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by the proposal: Insurance Code Articles 21.53F and 20A.39, 20A.37, 21.58D

§11.1607. Accessibility and Availability Requirements.

(a)-(h) (No change.)

(i) Each evidence of coverage or certificate delivered or issued for delivery by an HMO may provide enrollees the option to access covered health care services through a telehealth service or a telemedicine medical service.

(j) Before providing telehealth services or telemedicine medical services to an enrollee, an HMO shall provide the enrollee with the option to select a physician or provider within the HMO delivery network to provide the covered health care services, or to elect to receive telehealth services or telemedicine medical services.

(k) In order to provide covered health care services to any enrollee by a telehealth service or a telemedicine medical service, an HMO shall satisfy the criteria specified under subsection (a) of this section.

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

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Lynda Nesenholtz
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Texas Department of Insurance
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SUBCHAPTER T. QUALITY OF CARE

28 TAC §11.1901, §11.1902

The amendments are proposed pursuant to the Insurance Code Articles 20A.39, 20A.37, 21.58D, and §36.001. Article 20A.39(a) requires the rules adopted under Article 20A.37 that relate to implementation and maintenance by an HMO of a process for selecting and retaining affiliated physicians and providers to comply with the provisions of new Article 20A.39 and the standards promulgated by the National Committee for Quality Assurance, to the extent that those standards do not conflict with other laws of this state. Article 20A.37(b) requires each HMO to have an ongoing internal quality assurance program to monitor and evaluate its health care services in all institutional and noninstitutional contexts and authorizes the Commissioner to establish, by

rule, minimum standards and requirements for these programs, including, but not limited to, standards for assuring availability, accessibility, quality and continuity of care. Article 21.58D requires the Commissioner by rule to adopt a standardized form for the verification of the credentials of a physician and to require HMOs operating under the Insurance Code Chapter 20A to use the form. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by the proposal: Insurance Code Articles 21.53F and 20A.39, 20A.37, 21.58D

§11.1901. Quality Improvement Structure.

(a) The HMO shall develop and maintain an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services [~~service provided to enrollees,~~] and to pursue opportunities for improvement.

(b) The HMO governing body is ultimately responsible for the overall quality improvement program. The HMO governing body shall:

(1) appoint a [~~the formal~~] quality improvement committee that [~~which~~] shall include practicing physicians, [~~dentists,~~] individual [~~other~~] providers and at least one enrollee from throughout the HMO's service area. For purposes of this section, the enrollee appointed to the committee may not be an employee of the HMO;

(2) approve the quality improvement program;

(3) approve an annual quality improvement plan; [~~and~~]

(4) meet no less than annually to receive and review reports of the quality improvement committee or group of committees and take action when appropriate; and [~~.~~]

(5) review the annual written report on the quality improvement program.

(c) The quality improvement committee shall develop and evaluate the overall effectiveness of the quality improvement program.

(1) The quality improvement committee may delegate quality improvement activities to other committees that may, if applicable, include practicing physicians, individual providers, and enrollees from throughout the service area.

(A) All committees shall collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services to be furnished by the HMO to its enrollees.

(B) All committees shall meet and regularly report findings, recommendations, and resolutions in writing through the quality improvement committee to the HMO governing body.

(C) If the quality improvement committee delegates any quality improvement activity to any subcommittee, then the quality improvement committee must establish a method of oversight of each subcommittee.

(2) The quality improvement committee shall use multidisciplinary teams, when indicated, to accomplish quality improvement program goals.

§11.1902. Quality Improvement Program.

The quality improvement program shall be continuous and comprehensive, including both the quality of clinical care and the quality of service [~~requiring updates as needed~~]. The HMO shall dedicate adequate resources such as personnel, analytic capabilities, and data resources to the quality improvement program [~~that are adequate to meet the needs of the program~~]. The HMO shall continuously update and monitor the quality improvement program.

(1) Written description. There shall be a written description of the quality improvement program that outlines program organizational structure, functional responsibility and design.

(2) Work plan. There shall be an annual quality improvement work plan[~~, or schedule of activities,~~] that includes a schedule of activities designed to reflect the population served by the HMO in terms of age groups, disease categories, and special risk status. The work plan shall include but [~~is~~] not be limited to the following:

(A) Goals, objectives, [~~scope,~~] and planned projects or activities identified from the previous year, as well as for the current year; time frames for implementation; responsible individuals; and coordination of functions.[~~;~~]

(B) Use of quality indicators, performance measurements, and quality improvement data collection to monitor quality improvement.

(i) Quality indicators must be objective, measurable, and include performance goals for each indicator.

(ii) Performance measures must be process or outcome measures.

(iii) Data collected must be appropriate to the goals and objectives of the activity. [~~planned monitoring of previously identified issues, including tracking of issues over time; and~~]

(C) Ongoing or periodic assessment of both quality of clinical care and quality of service in planned projects, specifically: [~~planned evaluation and modification, if necessary, of the quality improvement program.~~]

(i) Network adequacy, which includes availability and accessibility of care, including assessment of open/closed physician and individual provider panels;

(ii) Continuity of health care and related services;

(iii) Clinical studies, which shall specify methodologies to be used to accomplish them;

(iv) The adoption and annual updating of clinical practice guidelines or clinical care standards, compatible with current principles of health care; the quality improvement program shall assure the practice guidelines:

(I) are approved by participating physicians and individual providers;

(II) are included in physician and provider manuals; and

(III) include preventive health services.

(v) Enrollee, physician, and individual provider satisfaction;

(vi) The complaint and appeal process, complaint data, and identification and removal of communication barriers which may impede enrollees, physicians, and providers from effectively making complaints against the HMO;

(vii) Preventive health care through health promotion and outreach activities:

(I) The HMO shall inform and educate physicians and providers about using the health management and outreach programs for the enrollees assigned to them.

(II) Outreach may be accomplished through, but not limited to, written educational materials, community-based programs and presentations, health promotion fairs, and monetary contributions to community-based organizations and health related initiatives of other programs.

(viii) Claims payment processes;

(ix) Contract monitoring, including delegation oversight and compliance with filing requirements; and

(x) Utilization review processes.

(D) Ongoing or periodic analysis and evaluation of both quality of clinical care and quality of service planned projects specified in subparagraph (C) of this paragraph, which shall include:

(i) Evidence that results of evaluation are used to improve clinical care and services; and

(ii) A systematic method of tracking areas identified for improvement to assure that appropriate action is taken to effect the needed improvement.

(3) Evaluation [~~Monitoring and evaluation~~]. There shall be an annual written report on the quality improvement program, which includes completed activities, trending of clinical and service indicators, analysis of program performance, conclusions, and demonstrated improvements in care and services. [~~The program monitoring and evaluation of clinical issues shall reflect the population served by the HMO in terms of age groups, disease categories, and special risk status. Monitoring and evaluation of clinical issues shall include:~~]

[~~(A) care and services provided in institutional settings;~~]

[~~(B) care and services provided in noninstitutional settings, including, but not limited, to practitioner offices and home and community support services agencies; and~~]

[~~(C) primary care and major specialty services, including but not limited to mental health, cancer, burn or cardiac centers.~~]

(4) [~~Identifying special needs. The quality improvement program shall identify enrollees with special needs such as disabilities and chronic conditions in order to assist the HMO in facilitating the development and implementation of appropriate courses of care to assure that health care services are available and accessible.~~]

[~~(5)~~] Credentialing. An HMO shall implement a documented process for selection and retention of contracted physicians and [~~affiliated~~] providers, which includes the following elements, as applicable:

(A) The HMO's policies and procedures shall clearly indicate the physician or individual provider directly responsible for the credentialing program and shall include a description of his or her participation.

(B) HMOs shall develop written criteria for credentialing of physicians and providers and [~~appropriate to the nature of the services to be furnished to enrollees. HMOs shall also develop~~] written procedures for verifications.

(i) [~~The governing body shall approve the policies and procedures.~~]

[(ii) ~~The policies and procedures shall be evaluated by practicing physicians and providers on at least an annual basis.~~]

[(iii))] Credentialing is [~~shall be~~] required for all physicians and [~~other~~] providers, including [~~who are permitted to practice independently under state law. Except for~~] advanced practice nurses, [~~and~~] physicians' assistants, and physicians and individual providers who are hospital-based and listed in the provider directory. Physicians or providers who are members of a contracting group, such as an independent physician association or medical group, shall be credentialed individually.

(ii) Credentialing [~~credentialing~~] is not required for:

(I) individual providers who furnish services only under the direct supervision of a physician or another individual provider except as specified in clause (i) of this subparagraph;

(II) hospital-based physicians or individual providers [~~who provide services incident to hospital services~~], except as specified in clause (i) of this subparagraph;[~~unless those physicians or providers are separately identified in enrollee materials as available to enrollees.~~]

(III) students [~~Students~~], residents, or fellows; or [~~do not require credentialing. Physicians or providers who are members of a contracting group shall be credentialed individually.~~]

(IV) pharmacists.

(iii) [~~(iv)~~] The initial credentialing process, including application, verification of information, and a site visit (if applicable), must be completed before the effective date of the initial contract with the physician or provider.

[(v) ~~Information collected pursuant to subparagraphs (B)(ii) and (iii) of this paragraph must be no more than six months old on the date on which the physician, dentist, or provider is determined to be eligible for contract by a peer review or credentialing committee , with the exception of information relating to the site visit and medical record review, which shall be no more than two years old.~~]

(iv) [~~(vi)~~] An HMO shall have written policies and procedures for suspending or terminating affiliation with a contracting physician or provider, including an appeals process, pursuant to the Insurance Code Article 20A.18A(b).

(v) [~~(vii)~~] The HMO shall have a procedure for the ongoing monitoring of physician and provider performance between periods of recredentialing and shall take appropriate action when occurrences of poor quality are identified. Monitoring shall include, but not be limited to:

(I) Medicare and Medicaid sanctions;

(II) Information from state licensing boards regarding sanctions or licensure limitations; and

(III) Complaints. [~~The HMO shall have written procedures for recredentialing at least every two years through a process that updates information obtained in initial credentialing and considers performance indicators. The HMO shall maintain documentation of current state licensure and required permits to practice.~~]

(vi) [~~(viii)~~] If the HMO delegates [~~the~~] credentialing functions to other entities, it shall have a process for developing [~~written procedures for~~] delegation criteria and for performing [~~of credentialing functions to other entities which include, but are not limited to, criteria for delegation,~~] pre-delegation and annual audits [~~audit procedure and criteria~~], a delegation agreement, a monitoring plan, and a procedure for termination of the delegation agreement for non-performance. If the HMO delegates credentialing functions to an entity accredited by the National Committee for Quality Assurance, the annual audit of that entity is not required; however, evidence of this accreditation shall be made available to the department for review. The HMO shall maintain documentation of [~~Documentation of~~] pre-delegation and annual audits [~~evaluations performed~~], executed delegation agreements, reports

received from the delegated entities, current rosters or copies of signed contracts with [~~of~~] physicians and providers who are affected by the delegation agreement, and ongoing [~~continuing~~] monitoring and shall make this documentation [~~evaluations shall be maintained by the HMO and made~~] available to the department for review. Credentialing files maintained by [~~at~~] the other entities to whom the HMO has delegated credentialing functions [~~delegated entity~~] shall be made available to the department for examination upon request. In all cases, the HMO shall maintain the right to approve credentialing, suspension, and termination of physicians and providers.

(vii) [~~(ix)~~] The HMO's procedures shall ensure that selection and retention criteria do not discriminate against physicians or providers who serve high-risk populations or who specialize in the treatment of costly conditions.

(viii) [~~(x)~~] The HMO [~~HMO's procedures~~] shall have [~~include~~] a procedure for notifying licensing [~~or disciplinary bodies~~] or other appropriate authorities when a physician's [~~practitioner's~~] or provider's affiliation is suspended or terminated due to quality of care concerns [~~deficiencies~~].

(C) [~~(B)~~] Initial credentialing process for physicians and individual providers shall include, but not be limited to, the following:

(i) Physicians [~~The applicant~~] shall complete the standardized credentialing [~~an~~] application [~~for affiliation. The application~~] adopted in §21.3201 of this title (relating to the Texas Standardized Credentialing Application for Physicians) and individual providers shall complete an application which includes [~~shall include~~] a work history covering at least five years, [~~and~~] a statement by the applicant regarding any limitations in ability to perform the functions of the position, history of loss of license and/or felony convictions; and history of loss or limitation of privileges, sanctions or other disciplinary activity, current professional liability insurance coverage information, and information on whether the individual provider will accept new patients from the HMO. This does not preclude an HMO from using the standardized credentialing application form specified in §21.3201 of this title for credentialing of individual providers. The completion date on the application shall be within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing [~~The application shall also include whether the physician will accept new patients from the HMO~~].

(ii) The following shall be verified from primary sources and evidence of verification shall be included in the credentialing files:

(I) A current [~~valid~~] license to practice in the State of Texas and information on sanctions or limitations on licensure. The primary source for verification shall be the state licensing agency or board for Texas, and the license and sanctions must be verified within 180 calendar days prior to the date the credentialing committee deems a physician or individual provider eligible for initial credentialing. The license must be in effect at the time of the credentialing decision.

(II) [~~If applicable, clinical privileges in good standing at the hospital designated by the physician or dentist as the primary network admitting facility. The primary source for verification shall be the hospital.~~]

[~~(III)~~] Education and training, including evidence of graduation from the appropriate professional school and completion of a residency or specialty training, if applicable. Primary source verification shall be sought from the appropriate schools and[~~,~~] training facilities or the American Medical Association's MasterFile. If the state licensing board, [~~or~~] agency, or specialty board verifies education and training with the physician's [~~physician~~] or individual provider's schools and facilities, evidence of current state licensure or board certification shall also serve as primary source verification of education and training.

(III) [~~(IV)~~] Board certification, if the physician or individual provider indicates [~~states~~] that he/she is board certified on the application. Primary source verification may be obtained from the American Board of Medical Specialties Compendium, the American Osteopathic Association, the American Medical Association MasterFile, or from the specialty boards, and the source used must be the most recent available.

(IV) Valid Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These must be in effect at the time of the credentialing decision and may be verified by any one of the following means:

(-a-) copy of the DEA or DPS certificate;

(-b-) visual inspection of the original certificate;

(-c-) confirmation with DEA or DPS;

(-d-) entry in the National Technical Information Service database; or

(-e-) entry in the American Medical Association Physician Master File.

(iii) The following shall be verified within 180 calendar days prior to the date of the credentialing decision and shall also be included in the physician's [~~physician~~] or individual provider's credentialing file:

(I) Past five years of [~~Malpractice~~] history of professional liability claims that resulted in settlements or judgments paid by or on behalf of the physician or individual provider, which may be obtained from the professional liability carrier or the National Practitioner Data Bank;

(II) Information on previous sanction activity by Medicare and Medicaid[~~;~~] which may be obtained from one of the following:

(-a-) National Practitioner Data Bank;

(-b-) Cumulative Sanctions Report available over the internet;

(-c-) Medicare and Medicaid Sanctions and Reinstatement Report distributed to federally contracting HMOs;

(-d-) state Medicaid agency or intermediary and the Medicare intermediary;

(-e-) Federation of State Medical Boards;

(-f-) Federal Employees Health Benefits Program department record published by the Office of Personnel Management, Office of the Inspector General;

(-g-) entry in the American Medical Association Physician Master File.

[~~(III)~~ ~~Copy of a valid Drug Enforcement Agency (DEA) and Department of Public Safety Controlled Substance permit, if applicable;~~]

[~~(IV)~~ ~~Evidence of current, adequate malpractice insurance meeting the HMO's requirements;~~]

[~~(V)~~ ~~Information about sanctions or limitations on licensure from the applicable state licensing agency or board~~].

(iv) The HMO shall perform a site visit to the offices of each primary care physician, obstetrician-gynecologist, [~~or~~]

primary care dentist, and high-volume individual behavioral health provider as part of the initial credentialing process. In addition, the HMO shall have written procedures for determining [~~the~~] high-volume [~~physicians and~~] individual behavioral health [~~non-institutional~~] providers. If physicians or individual providers are part of a group practice which shares the same office, one visit to the site may be used for all physicians or individual providers in the group practice, as well as for new physicians or individual providers who subsequently join the group practice. The site visit assessment shall be made available to the department for review [~~all physicians and providers in that office as long as medical records for each physician or provider are sampled~~].

(v) Site visits shall [~~be conducted by clinical personnel (or teams including clinical personnel), and shall~~] consist of an evaluation of the site's accessibility, appearance, appointment availability, and space, [~~and of the adequacy of equipment,~~] using standards approved [~~developed~~] by the HMO. If a physician or individual provider offers services that require certification or licensure, such as laboratory or radiology services, the physician or individual provider shall have the current certification or licensure available for review at the site visit. In addition, as a result of the site visits, it shall be determined whether the site conforms to the HMO's standards for [~~medical or dental~~] record organization, documentation, [~~keeping practices~~] and confidentiality practices [~~requirements~~]. Should the site not conform to the HMO's standards, the HMO shall require a corrective action plan and perform a follow-up site visit every six months until the site complies with the standards.

(D) [~~(C)~~] The HMO shall have written procedures for recredentialing physicians and individual providers at least every three years through a process that updates information obtained in initial credentialing, including professional liability coverage. The process shall also consider performance indicators for primary care and high-volume individual behavioral health care providers, including enrollee complaints and information from quality improvement activities. Recredentialing procedures [~~for physicians and individual providers~~] shall include, but not be limited to, the following processes:

(i) Reverification of the following [~~The following shall be reverified~~] from the primary sources and in accordance with the same verification time limit as for the initial credentialing process specified in subparagraph (C) of this paragraph:

(I) Licensure and information on sanctions or limitations on licensure;

(II) [~~Clinical privileges;~~]

[(III)] Board certification: [~~only~~]

(-a-) if the physician or individual provider [~~dentist~~] was due to be recertified; or

(-b-) if the physician or individual provider indicates [~~states~~] that he or she has become board certified since the last time he or she was credentialed or recredentialed; and[~~.~~]

(III) Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. These may be reverified by any one of the following means:

(-a-) copy of the DEA or DPS certificate;

(-b-) visual inspection of the original certificate;

(-c-) confirmation with DEA or DPS;

(-d-) entry in the National Technical Information Service database; or

(-e-) entry in the American Medical Association Physician Master File.

(ii) Updated history of professional liability claims, and [~~The HMO shall requery the National Practitioner Data Bank and obtain updated~~] sanction and [~~or~~] restriction information from [~~licensing agencies,~~] Medicare[~~,~~] and Medicaid in accordance with the verification sources and time limits specified in subparagraph (C)(iii) of this paragraph.

[(iii) ~~Site visits conducted by clinical personnel (or teams including clinical personnel) shall be repeated for primary care physicians and high-volume physicians and providers. Multi-practitioner sites should be visited every two years. Medical record audits, including evaluation of the quality of encounter notes, shall be performed within the two years prior to recredentialing.~~]

(E) [~~(D)~~] The credentialing [~~Credentialing~~] process for institutional providers shall include[~~, but not be limited to,~~] the following:

(i) Evidence [~~The HMO procedure shall require evidence~~] of state licensure;[~~, and of compliance with any other applicable state or federal requirements.~~]

(ii) Evidence [~~The HMO procedure may require evidence~~] of Medicare certification; [~~, as applicable, or accreditation by the Joint Commission on Accreditation of Healthcare Organizations or another national accrediting body. The HMO shall maintain evidence of current licensure and Medicare certification or national accreditation in the provider's credentialing file at all times.~~]

(iii) Evidence of other applicable state or federal requirements, e.g., Bureau of Radiation Control certification for diagnostic imaging centers, Texas Mental Health and Mental Retardation certification for community mental health centers, CLIA (Clinical Laboratory Improvement Amendments of 1988) certification for laboratories; [~~If the provider is not Medicare certified or accredited by a national accrediting body, the HMO shall establish written standards for participation, and maintain evidence of evaluation of the provider against those standards in the provider's credentials file.~~]

(iv) Evidence of accreditation by a national accrediting body, as applicable; the HMO shall determine which national accrediting bodies are appropriate for different types of institutional providers. The HMO's written policy and procedures must state which national accrediting bodies it accepts; [~~The HMO shall maintain evidence of current licensure and Medicare certification in the provider's credentialing files at all times.~~]

(v) Evidence of on-site evaluation of the institutional provider against the HMO's written standards for participation if the provider is not accredited by the national accrediting body required by the HMO. [~~The HMO procedures shall provide for recredentialing of institutional providers at least every three years.~~]

(F) The HMO procedures shall provide for recredentialing of institutional providers at least every three years through a process that updates information obtained for initial credentialing as set forth in subparagraph (E)(i)-(v) of this paragraph.

(G) Under Insurance Code Article 20A.39, the standards adopted in this paragraph must comply with the standards promulgated by the National Committee for Quality Assurance (NCQA) to the extent that those standards do not conflict with other laws of the state. Therefore, if the NCQA standards change and there is a difference between the standards specified in this paragraph and the NCQA standards, the NCQA standards shall prevail to the extent that those standards do not conflict with the other laws of this state.

(5) Site visits for cause.

(A) The HMO shall have procedures for detecting deficiencies subsequent to the initial site visit. When the HMO identifies new deficiencies, the HMO shall reevaluate the site and institute actions for improvement.

(B) An HMO may conduct a site visit to the office of any physician or provider at any time for cause. The site visit to evaluate the complaint or other precipitating event shall be conducted by appropriate personnel and may include, but not be limited to, an evaluation of any facilities or services relating to the complaint or event and an evaluation of medical records, equipment, space, accessibility, appointment availability, or confidentiality practices, as appropriate.

(6) Peer Review. The quality improvement program shall provide for an effective peer review procedure for physicians[~~, dentists,~~] and individual [~~other~~] providers.

[~~(7) Measurements, data collection, and analysis. The HMO shall track quality improvement by using measurements, quality improvement data collection and analysis.~~]

[~~(A) To monitor and evaluate aspects of care and services identified, the HMO shall use quality indicators that are objective, measurable, and based on current knowledge and clinical experience.~~]

[~~(B) The HMO shall have performance goals for each indicator.~~]

[~~(8) Methods and frequency of data collection. The HMO shall establish methods and frequency of data collection for each indicator.~~]

[~~(A) Quality improvement activities include the collection of data.~~]

[~~(B) Data collected through monitoring and evaluation activities shall be analyzed.~~]

~~*(i)* Appropriate clinicians shall evaluate data on clinical performance of practitioners.]~~

~~*(ii)* Multidisciplinary teams shall be used, where indicated, to analyze and address quality improvement issues.]~~

[~~(9) Health promotion.~~]

[~~(A) The HMO shall facilitate preventive health care through health promotion activities. Health promotion activities include outreach to enrollees to encourage appropriate use of services and educating enrollees in preventive health care measures. Outreach may be accomplished through but not limited to written educational materials, community based programs, health promotion fairs, verbal communication, and monetary contributions made to community based organizations and health related initiatives of other programs.~~]

[~~(B) The HMO shall inform and educate physicians and, if applicable, providers such as dentists and physical therapists about using the health management and outreach programs for the enrollees assigned to them.~~]

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

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

TRD-200202331

Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6327

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28 TAC §11.1903

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

The Texas Department of Insurance proposes repeal of §11.1903 concerning quality improvement committees of health maintenance organizations (HMOs). Repeal of this section is necessary to eliminate redundant provisions and to incorporate provisions of this section into the proposed amendments to §§11.1901-11.1902 which are published elsewhere in this issue of the *Texas Register*.

Kimberly Stokes, Senior Associate Commissioner, Life/Health/Licensing, has determined that during the first five years the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed repeal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has also determined that for each year of the first five years the repeal of the section is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed section will be easier-to-understand and better-organized operational guidelines and standards for HMO quality improvement committees, governing bodies, and quality improvement programs. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 28, 2002 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Margaret Lazaretti, Director of Project Development, Life/Health/Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

Repeal of §11.1903 is proposed pursuant to the Insurance Code Article 20A.37 and §36.001. Article 20A.37(b) requires each HMO to have an ongoing internal quality assurance program to monitor and evaluate its health care services in all institutional and noninstitutional contexts and authorizes the Commissioner to establish, by rule, minimum standards and requirements for these programs, including, but not limited to, standards for assuring availability, accessibility, quality and continuity of care. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code Article 20A.37

§11.1903. Quality Improvement Committee.

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

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER X. CREDENTIALING OF PHYSICIANS

28 TAC §21.3201

The Texas Department of Insurance proposes new §21.3201 concerning a standardized credentialing application for physicians. The new section is necessary to implement Senate Bill 544 (Acts 2001, 77th Leg., ch. 1369, §3, eff. Sept. 1, 2001). Senate Bill 544 enacted Insurance Code Article 21.58D, which requires the Commissioner by rule to adopt a standardized form for the verification of the credentials of a physician and to require that a public or private hospital, a health maintenance organization (HMO) operating under the Insurance Code Chapter 20A, and a preferred provider organization operating under the Insurance Code Article 3.70-3C use the form for verification of credentials. Article 21.58D(b) provides that, in adopting the form, the Commissioner shall consider any credentialing application form that is widely used in this state. After such consideration, the Department is proposing a credentialing application form that was originally developed by the Coalition for Affordable Quality Healthcare (CAQH) as part of its single source credentialing system and that has been modified by the Department for use in Texas. The CAQH, a nonprofit trade association, is a coalition of 26 of the largest health plans and insurers in the United States and three health plan associations whose stated purpose is to work together to help improve the health care experience for consumers and physicians.

The new section proposes to adopt and incorporate by reference the Texas Standardized Credentialing Application for required use by public and private hospitals, HMOs, preferred provider benefit plan insurers, and preferred provider organizations for credentialing and recredentialing of physicians. The proposed form is designed for use not only for physicians but for other health care professionals who require credentialing. Therefore, while the proposed rule requires the form to be used for credentialing and recredentialing of physicians, the form may also be used for credentialing other health care professionals at the option of the credentialing entity. This proposed form is referenced in proposed §11.1902 which is published elsewhere in this edition of the Texas Register. The credentialing application consists of three sections: Section I requests personal, professional, and educational information; Section II consists of disclosure questions on sanctions, professional liability insurance, malpractice claims history, criminal/civil history, and ability to perform job; Section III consists of an Authorization, Acknowledgement, Attestation, and Release form.

Proposed new subsection (a) specifies the purpose and applicability of the new section. Proposed new subsection (b) specifies definitions. Proposed new subsection (c) adopts and incorporates by reference the standardized credentialing application and specifies the types of information and disclosure requested in the form. Proposed new subsection (d) specifies the proposed effective date. Proposed new subsection (e) indicates where the form may be obtained, and proposed new subsection (f) permits the form to be submitted electronically if the credentialing entity accepts electronic submissions.

The proposed effective date is for initial credentialing or recredentialing that occurs on or after July 1, 2002.

Kimberly Stokes, Senior Associate Commissioner, Life/Health/Licensing, has determined that during the first five years the proposed section will be in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. There will be no measurable effect on local employment or the local economy as a result of administering or enforcing the section.

Ms. Stokes has also determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the section will be a uniform credentialing application form for physicians that will allow physicians to complete a single application that may be submitted in paper copy or electronically to all public or private hospitals, HMOs, preferred provider benefit insurers and preferred provider organizations with whom the physician contracts to provide health care services or seeks to obtain hospital privileges. Many physicians currently contract with numerous entities that require credentialing, and the standardized form will result in reduced time and paperwork for physicians. The anticipated benefit to public and private hospitals, HMOs, preferred provider benefit plan insurers, and preferred provider organizations that credential and recredential physicians is that these entities will no longer have to expend financial and staff resources in design and format updates of the physician credentialing application form. The economic costs to any public or private hospital, HMO, preferred provider benefit plan insurer, preferred provider organization, or physician required to comply with the proposed section are the direct result of the enactment of Senate Bill 544, and not a result of the administration or enforcement of the proposed section.

Ms. Stokes has determined that there is no adverse economic impact on any public or private hospital, HMO, preferred provider benefit plan insurer, preferred provider organization, or physician that qualifies as a small business or micro-business under the Government Code §2006.001 as a result of the proposed new section. The economic costs to any small business or micro-business public required to comply with the proposed section are the direct result of the legislative enactment of Senate Bill 544. The determining factor in the costs incurred by a public or private hospital, HMO, preferred provider benefit plan insurer, or preferred provider organization is not based on the size of the entity but rather is based on the number of physicians that require credentialing by the entity. Regardless of the size of the physician's business, the proposed section will allow physicians to complete a single credentialing application for submission to all public or private hospitals, HMOs, preferred provider benefit insurers and preferred provider organizations with whom the physician contracts to provide health care services or seeks to obtain hospital privileges. The size of the business, therefore, has no bearing upon the applicability of the proposed section.

Because of the intent of Senate Bill 544 to standardize the physician credentialing application used by public or private hospitals, HMOs, preferred provider benefit plan insurers, and preferred provider organizations, it is neither legal nor feasible to exempt small businesses or micro-businesses from the requirements of the proposed section.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 28, 2002 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Margaret Lazaretti, Director of Project Development, Life/Health/Licensing, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing must be submitted separately to the Office of Chief Clerk.

The new section is proposed pursuant to the Insurance Code Article 21.58D and §36.001. Article 21.58D requires the Commissioner by rule to adopt a standardized form for the verification of the credentials of a physician and to require public and private hospitals, HMOs operating under the Insurance Code Chapter 20A, and preferred provider organizations operating under Insurance Code Article 3.70-3C to use the form for verification of credentials. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by the proposal: Insurance Code Article 21.58D

§21.3201. Texas Standardized Credentialing Application for Physicians.

(a) Purpose and Applicability. The purpose of this section is to adopt a standardized credentialing application form as required by the Insurance Code Article 21.58D. Hospitals, health maintenance organizations, preferred provider benefit plans, and preferred provider organizations are required to use this form for credentialing and recredentialing of physicians.

(b) Definitions. The following words and terms when used in this section shall have the following meanings:

(1) Credentialing--The process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or provider to determine eligibility to deliver health care services.

(2) Department--Texas Department of Insurance.

(3) Health maintenance organization--A health maintenance organization as that term is defined by the Insurance Code Article 20A.02(n).

(4) Hospital--A licensed public or private institution as defined by Chapter 241, Health and Safety Code, and any hospital owned or operated by state government.

(5) Physician--An individual licensed to practice medicine in this state.

(6) Preferred provider benefit plan--A plan issued by an insurer under the Insurance Code Article 3.70-3C.

(7) Preferred provider organization--An organization contracting with an insurer issuing a preferred provider benefit plan under the Insurance Code Article 3.70-3C, for the purpose of providing a network of preferred providers.

(8) Recredentialing--The periodic process by which:

(A) qualifications of physicians are reassessed;

(B) performance indicators including utilization and quality indicators are evaluated; and

(C) continued eligibility to provide services is determined.

(c) Texas Standardized Credentialing Application.

(1) The Department adopts and incorporates by reference the Texas Standardized Credentialing Application for required use by hospitals, health maintenance organizations, preferred provider benefit plan insurers, and preferred provider organizations for credentialing and recredentialing of physicians.

(2) The application consists of three sections. Section I requests personal, professional, and educational information. Section II consists of disclosure questions on sanctions, professional liability insurance, malpractice claims history, criminal/civil history, and ability to perform job. Section III consists of an Authorization, Acknowledgment, Attestation, and Release form.

(d) Effective date. The application form is required for initial credentialing or recredentialing that occurs on or after July 1, 2002.

(e) Availability. This form may be obtained on the Department's Web site at www.tdi.state.tx.us or from the Texas Department of Insurance, Quality Assurance Division, Mail Code 103-6A, P. O. Box 149104, Austin, Texas, 78714-9104; or by calling 1-800-599-SHOP (1476); in Austin, 305-7211. Reproduction of this form without any changes is allowed.

(f) Electronic submission. The form may be submitted electronically to the credentialing entity in the same format as the hard copy form if the credentialing entity accepts such electronic submissions.

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

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

TRD-200202332
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 1. PURPOSE OF RULES, GENERAL PROVISIONS

30 TAC §1.12

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §1.12.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of this rulemaking is to implement legislation relating to public notice requirements. House Bill (HB) 2912 (an act

relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001, §1.12, amended Texas Water Code (TWC), Chapter 5, Subchapter D, by adding, among other sections, §5.129, Summary for Public Notices. Proposed new §1.12 addresses the requirements of new TWC, §5.129, which sets forth content of public notice requirements.

SECTION DISCUSSION

The commission proposes new §1.12, Summary for Public Notices, to address the requirement of TWC, §5.129, as added by HB 2912, which provides that the commission, by rule, shall require that public notices include a succinct beginning statement of the subject of the notice. Generally, new §1.12 is proposed to mirror the statutory provisions. Since the provisions of this new statute are applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required, this provision is proposed to be added to Chapter 1 of the commission rules due to the broad applicability of this chapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government due to administration or enforcement of the proposed rule.

This rulemaking is intended to implement certain provisions of HB 2912, which requires each public notice published by the commission or by a person regulated by the commission to include at the beginning of the notice, a succinct statement of the subject of the notice. This requirement would be applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required. The proposed rule would add rule language to existing commission regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any unit of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of implementing the proposed rule will be potentially improved public notification by providing clearer descriptions of the subject of notices.

This rulemaking is intended to implement certain provisions of HB 2912, which requires each public notice published by the commission or by a person regulated by the commission to include at the beginning of the notice, a succinct statement of the subject of the notice. This requirement would be applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required. The proposed rule would add rule language to existing commission regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any individual or business.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of administration or enforcement of the proposed rule, which is intended to implement provisions of HB 2912, which requires each public notice published by the commission or by a person regulated by the commission to include at the beginning of the notice, a succinct statement of the subject of the notice. This requirement would be applicable to all public notices relating to any matter under the commission's jurisdiction for which public notice is required. The proposed rule would add rule language to existing commission regulations to comply with the provisions of HB 2912. This rulemaking is procedural in nature and does not add regulatory requirements that are anticipated to result in significant fiscal implications for any small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning public notice, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the 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 propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to HB 2912 and does not exceed the requirements of this bill. This proposal 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. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state laws (i.e., Texas Government Code, §2001.004 and TWC, §5.129). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for public notice. As added by HB 2912, TWC, §5.129 requires that public notices include a succinct beginning statement of the subject of the notice. The proposed rule will substantially advance this stated purpose by providing specific procedural requirements in response to legislative changes. Promulgation and enforcement of the rule will not burden private real property. The proposed rule does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.) and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq*.).

Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin at 2:00 p.m. on May 21, 2002 at the Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 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 Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information contact Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY

The new section 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 when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §5.129, which requires that public notices include a succinct beginning statement of the subject of the notice.

The proposed new section implements TWC, §§5.103, 5.105, and 5.129 and Texas Government Code, §2001.004.

§1.12. Summary for Public Notices.

Each public notice required by law or rule to be issued or published by the commission, or by a person under the jurisdiction of the commission, shall include at the beginning of the notice a succinct summary statement of the subject of the notice. The summary statement shall be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice. The summary statement may not be grounds for challenging the validity of the proposed action for which notice was given.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202266
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§5.1 - 5.5, 5.7, 5.10, and 5.14. The commission also proposes new §5.20 and §5.21. The commission proposes these amendments and new sections to Chapter 5 to implement House Bill (HB) 2912, Article 1 (Administration and Policy), §1.10, as passed by the 77th Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill 2912, §1.10, amended Texas Water Code (TWC), §5.107, relating to Advisory Councils, which authorized the commission to create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate. The amendment to §5.107 changed the title of the section from "Advisory Councils" to "Advisory Committees, Work Groups, and Task Forces." The amended section authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public

information, or any other matter that the commission or the executive director may consider appropriate; requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces; and requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the commission's website. The amended section provides that the commission is not required to ensure that all representatives attend a scheduled meeting, and further provides that a rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

Additionally, HB 2914, §45, amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Among the more significant amendments are changes to the definition of advisory committee, addition of a section relating to applicability of Chapter 2110, addition of a section relating to establishment of advisory committees, and changes to the section relating to the duration of advisory committees. A change to the definition of advisory committee in §2110.001 clarifies that an entity must have multiple members to be considered an advisory committee, and other changes remove the statements that an advisory committee is not a state agency and that it is created by or under state law. New §2110.0011 provides that Chapter 2110 applies unless and to the extent that another state law specifically states that the chapter does not apply; or a federal law or regulation imposes an unconditional requirement that irreconcilably conflicts with the chapter, or imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with the chapter. New §2110.0012 provides that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency; or the agency, under state or federal law, created the committee to advise the agency. The changes to §2110.008 provide that unless the state agency, in establishing an advisory committee, by rule, designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation.

The major part of implementing this statutory amendment is being proposed as amendments to Chapter 5, Advisory Committees. However, as part of this rulemaking, a minor amendment is necessary for 30 TAC Chapter 20, Rulemaking, and is also being proposed in the Proposed Rules section of this issue of the *Texas Register*. That part of the implementation of HB 2912 adds a requirement to §20.19 concerning Working Groups, that appointment of any advisory committees, groups, or persons to advise the commission or the executive director on rulemaking must be in accordance with the process established under Chapter 5.

SECTION BY SECTION DISCUSSION

The proposed amendments to this chapter include changing the title from "Advisory Committees" to "Advisory Committees and Groups." The chapter is also proposed to be divided into three subchapters: Subchapter A, to establish a common purpose for the other two subchapters; Subchapter B, to address advisory committees; and Subchapter C, to address advisory groups.

The proposed amendment to §5.1, Purpose, makes modifications to include the creation and operation of advisory groups in addition to advisory committees.

The proposed amendments to §5.2, Definitions, change the definition of advisory committee and add definitions for balanced representation and minutes.

The proposed amendments to §5.3, Creation and Duration of Advisory Committees, expand the title of the section to specify that the section applies to committees created by the commission. The section is further amended to specify that an advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b).

The proposed amendments to §5.4, Purpose and Duties of Advisory Committees, clarify that advisory committees have no executive or administrative powers or duties with respect to the operation of the agency, rather than the operation of the commission as currently stated.

The proposed amendments to §5.5, Composition of Advisory Committees, add a subsection that would emphasize that the commission shall make reasonable attempts to provide balanced representation on all advisory committees. The proposed subsection includes the exceptions provided by Texas Government Code, §2110.0011.

The proposed amendments to §5.7, Membership, add "becomes ineligible" as another basis for a member to vacate his or her position on the committee.

The proposed amendments to §5.10, Presiding Officer, modify the manner of appointing the presiding officer or other officers of advisory committees.

The proposed amendments to §5.14, Records, change the title of the section to Monitoring of Advisory Committees and Records to highlight the commission's statutory responsibility to monitor an advisory committee's composition and activities. New subsection (a) is proposed to specifically establish that requirement. New subsection (c) is also proposed to require that minutes of committee meetings and reports shall be maintained in a form and location that is easily accessible to the public.

The proposed new §5.20, Advisory Groups, authorizes the executive director to create and consult with advisory groups.

The proposed new §5.21, Formation of Advisory Groups, directs the executive director to identify affected groups of interested persons for advisory groups, and to make reasonable attempts to balance advisory groups.

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 amendments and new sections 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 amendments and new sections. The proposed amendments and new sections are intended to affect the operations of the commission. No other units of state or local government are anticipated to be affected by the proposed amendments and new sections.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914, and to make minor editorial changes to existing commission advisory committee and advisory group

rules. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

The proposed amendments and new sections will incorporate new rule language into existing commission rules that specify the requirements the commission or executive director must follow regarding advisory committees, work groups, and task forces to assure compliance with these provisions of HB 2912 and HB 2914.

The proposed amendments and new sections are intended to affect the commission's operations and are not anticipated to result in fiscal implications for any other unit of state or local government. The amendments are procedural in nature and are only intended to implement procedures for the appointing of persons to commission initiated advisory committees and executive director created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission's website. The amendments also modify the effect of other state or federal law on the membership of advisory committees and alter the procedures allowed to set the duration of advisory committees.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed amendments and news sections are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments and new sections will be an increase in the diversity of participants on advisory committees, work groups, and task forces initiated by the commission or the executive director.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914, and to make minor editorial changes to existing advisory group rules. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

The proposed amendments and new sections will incorporate new rule language into existing commission rules that specify the requirements the commission or the executive director must follow regarding advisory committees, work groups, and task forces to assure compliance with these provisions of HB 2912 and HB 2914.

The proposed amendments and new sections are intended to affect the commission's operations and are not anticipated to result in fiscal implications for any other unit of state or local government. The amendments are procedural in nature and are only intended to implement procedures for the appointing of persons to commission initiated advisory committees and executive director created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission's website. The amendments also modify the effect of other state or federal law on the membership of advisory committees and alter the procedures allowed to set the duration of advisory committees.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, to small or micro-business due to implementation of the proposed amendments and new sections, which are intended to implement certain provisions of HB 2912 and HB 2914. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

The proposed amendments and new sections will incorporate new rule language into existing commission rules that specify the requirements the commission must follow regarding advisory committees, work groups, and task forces to assure compliance with these provisions of HB 2912 and HB 2914.

The proposed amendments and new sections are intended to affect the commission's operations by making reasonable attempts to achieve balanced representation on all advisory committees, work groups, and task forces initiated by the commission or created by the executive director. The requirement to make reasonable attempts to ensure balanced representation may result in additional small and micro-businesses being invited to participate in one or more the advisory committees and advisory groups. For these businesses, the commission anticipates there will be additional travel and other costs to participate, which are not anticipated to be significant.

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 has reviewed the proposed rulemaking in light of the regulatory impact 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 proposed rules are not specifically intended to protect the environment, or reduce risks from environmental exposure and are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rules are intended to affect the commission's operations and are not anticipated to result in fiscal implications for any other unit of state or local government. The proposed rules are procedural in nature and are only intended to implement procedures for the appointing of persons to commission initiated advisory committees and executive director created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission's website. The proposed rules also modify the effect of other state or federal law on the membership of advisory committees and alter the procedures allowed to set the duration of advisory committees. As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor are the rules proposed solely under the general powers of the commission. The commission invites public comment on the draft regulatory impact analysis determination.

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 proposed rules would implement HB 2912, §1.10 which authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces and requires the commission to make reasonable attempts to have balanced representation on those entities, monitor the composition and activities of the entities, and maintain that information in a form and location easily accessible to the public, including placing the information on the commission's website.

The proposed rules also implement HB 2914 which modified the effect of other state or federal law on the membership of advisory committees and altered the procedures allowed to set the duration of advisory committees.

These proposed rules substantially advance those purposes by defining balanced representation, requiring the commission and executive director to make reasonable attempts to provide such balance, monitor the composition and activities through attendance lists, annual reports, and minutes if they are kept and make the information available on the commission's website. The proposed rules also substantially advance those purposes by utilizing the statutory language concerning the effect of state and federal law on membership and duration of advisory committees.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules 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 exist in the absence of the regulations.

Because these proposed rules affect only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to these proposed rules.

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 Austin on May 20, 2002, at 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The hearing is structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a 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 Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-068-005-AD. For further information, please contact Debra Barber at (512) 239-0412.

SUBCHAPTER A. PURPOSE

30 TAC §5.1

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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public

information, or for any other matter that the commission or the executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendment implements TWC, Chapter 5, Texas Natural Resource Conservation Commission, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

§5.1. Purpose.

This chapter governs procedures for the creation and operation of [~~applicable to~~] advisory committees and groups [~~created to advise the Texas Natural Resource Conservation Commission~~].

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202271
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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SUBCHAPTER B. ADVISORY COMMITTEES

30 TAC §§5.2 - 5.5, 5.7, 5.10, 5.14

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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendments implement TWC, Chapter 5, Texas Natural Resource Conservation Commission, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

§5.2. Definitions.

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

(1) Advisory committee - As used in this subchapter, a [~~A~~] committee, council, commission, task force, or other entity, other than a state agency, created by the commission or by state law [~~or under state law~~], [~~other than a state agency,~~] that has as its primary function the provision of advice to the commission. An advisory group created by the executive director is not an advisory committee.

(2) Balanced representation - Membership that represents a diversity of viewpoints on issues to be discussed including: factors such as geography, socioeconomic status, ethnicity, and size and type of businesses and governments; and membership in classes such as environmental groups, trade groups, consumer or public interest groups, industries or occupations, and consumers of services provided by the commission or by industries or occupations.

(3) Minutes - Notes or summary covering points to be remembered from a meeting, not a detailed description or verbatim transcript of the discussion.

§5.3. Creation and Duration of Advisory Committees Created by the Commission.

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b) [~~on the fourth anniversary of the date of its creation unless the commission has established a different date by commission resolution or votes to continue the advisory committee, or the advisory committee has a specific duration prescribed by statute~~].

§5.4. Purpose and Duties of Advisory Committees.

The purpose of an advisory committee [~~committees~~] shall be to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters within the commission's jurisdiction. An [~~The~~] advisory committee's [~~committees'~~] sole duty is to advise the commission. An advisory committee has [~~Advisory committees have~~] no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission. The specific purposes and tasks of an advisory committee subject to this subchapter [~~chapter~~] shall be identified by commission resolution.

§5.5. Composition of Advisory Committees.

(a) The composition of advisory committees created by the commission shall comply with the requirements of Texas Government Code, Chapter 2110.

(b) The commission shall make reasonable attempts to provide balanced representation on all advisory committees. A rule or other action may not be challenged because of the composition of an advisory committee. This section does not apply to an advisory committee to the extent that:

(1) another state law specifically states that Texas Government Code, Chapter 2110 does not apply; or

(2) a federal law or regulation:

(A) imposes an unconditional requirement that irreconcilably conflicts with the requirements of Texas Government Code, Chapter 2110; or

(B) imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with Texas Government Code, Chapter 2110.

§5.7. Membership.

Except as otherwise provided by law, all members of advisory committees are appointed by and serve at the pleasure of the commission. If a member resigns, dies, becomes incapacitated, is removed by the commission, [~~or~~] otherwise vacates his or her position, or becomes ineligible prior to the end of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

§5.10. Presiding Officer.

Except as otherwise provided by law [~~or commission resolution~~], each committee shall elect from its members a presiding officer, [~~chairperson, or co-chairpersons,~~] who shall report the committee's advice and attendance in writing to the commission. The commission may, at its discretion, appoint other officers [~~presiding officers, chairpersons, or co-chairpersons,~~] of advisory committees. Committees may elect other officers at their pleasure.

§5.14. Monitoring of Advisory Committees and Records.

(a) The commission shall monitor the composition and activities of advisory committees.

(b) Agency staff shall record and maintain the minutes of each advisory committee and subcommittee meeting. The staff shall maintain a record of actions taken and shall distribute copies of approved minutes and other committee documents to the commission and to advisory committee members.

(c) Minutes kept for advisory committee meetings and reports required under §5.11 of this title (relating to Manner of Reporting) shall be maintained in a form and location that is easily accessible to the public, including making the information available on the commission's website.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202272
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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SUBCHAPTER C. ADVISORY GROUPS

30 TAC §5.20, §5.21

STATUTORY AUTHORITY

The new sections 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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed new sections implement TWC, Chapter 5, Texas Natural Resource Conservation Commission, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

§5.20. Advisory Groups.

The executive director may create and consult with advisory groups.

§5.21. Formation of Advisory Groups.

The executive director shall identify affected groups of interested persons for advisory groups and shall make reasonable attempts to have balanced representation on all advisory groups.

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

Filed with the Office of the Secretary of State on April 12, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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CHAPTER 20. RULEMAKING

30 TAC §20.19

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §20.19 as part of the implementation of House Bill (HB) 2912, Article 1 (Administration and Policy), §1.10, as passed by the 77th Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill 2912 amended Texas Water Code (TWC), §5.107, relating to Advisory Committees, which authorizes the commission to create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils that the commission may consider appropriate. The amendment to §5.107 changed the title of the section from "Advisory Councils" to "Advisory Committees, Work Groups, and Task Forces." The amended section authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the executive director may consider appropriate; requires the commission to identify affected groups of interested persons for advisory committees, work groups, and task forces and make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces; and requires the commission to monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and to maintain that information in a form and location that is easily accessible to the public, including making the information available on the commission's website. The amended section provides that the commission is not required to ensure that all representatives attend a scheduled meeting, and further provides that a rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

Additionally, HB 2914, §45, amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Among the more significant amendments are changes to the definition of advisory committee, addition of a section relating to applicability of Chapter 2110, addition of a section relating to establishment of advisory committees, and changes to the section relating to the duration of advisory committees. A change to the definition of advisory committee in §2110.001 clarifies that an entity must have multiple members to be considered an advisory

committee, and other changes remove the statements that an advisory committee is not a state agency and that it is created by or under state law. New §2110.0011 provides that Chapter 2110 applies unless and to the extent that another state law specifically states that the chapter does not apply; or a federal law or regulation imposes an unconditional requirement that irreconcilably conflicts with the chapter; or imposes a condition on the state's eligibility to receive money from the federal government that irreconcilably conflicts with the chapter. New §2110.0012 provides that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency; or the agency, under state or federal law, created the committee to advise the agency. The changes to §2110.008 provide that unless the state agency, in establishing an advisory committee, by rule designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation.

The major part of implementing this statutory amendment is being proposed as an amendment to 30 TAC Chapter 5, Advisory Committees, and is being proposed in the Proposed Rules section of this issue of the *Texas Register*. This part of the implementation of HB 2912 changes the title and adds a requirement to §20.19 that appointment of any workgroups or persons to advise the commission or the executive director on rulemaking must be in accordance with the process established under Chapter 5.

SECTION DISCUSSION

The proposed amendments to §20.19 add a requirement that the process established under Chapter 5, Subchapter C, relating to Advisory Groups, shall be followed. The proposed amendments to this section also change the title of the section from "Working Groups" to "Working Committees and Groups."

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 significant fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission. No other units of state or local government are anticipated to be affected by the proposed amendment.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill also requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912 and HB 2914. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed amendment is not anticipated to result in fiscal implications for any other unit of state or local government, because it is procedural in nature and only intended to update rule references that require commission and executive director compliance with new advisory committee procedures.

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 the commission's compliance with provisions that are intended to increase the diversity of participants in commission and executive director advisory committees, work groups, and task forces.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2914. House Bill 2912 authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. The bill also requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups; monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed rule amendment is not anticipated to result in fiscal implications for any individual or business, because it is procedural in nature and only intended to update rule references that require commission compliance with new advisory committee procedures.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications to small or micro-business due to implementation of the proposed amendment, which is intended to implement certain provisions of HB 2912 and HB 2914. The bill authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces on issues relating to the environment, public information, or any other matter that the commission or executive director may consider appropriate. House Bill 2912 requires the commission to identify affected groups of interested persons for inclusion in advisory groups; make reasonable attempts to have a balanced representation in the advisory groups;

monitor the composition and activities of advisory groups appointed by the commission or formed at the staff level; and provide advisory group information in a form and location that is easily accessible to the public, including making the information available via the commission's website. Additionally, HB 2914 revises the definition, applicability, establishment, and duration of advisory committees.

In a separate rulemaking, the commission is proposing rule changes to Chapter 5 that would adopt the advisory committee provisions from HB 2912 and HB 2914. The proposed amendment in this rulemaking adds a requirement to Chapter 20 that specifies the appointment of any work groups or persons to advise the commission or the executive director on a formal rulemaking action must be in accordance with the processes established under Chapter 5.

The proposed rule amendment is not anticipated to result in fiscal implications for any small or micro-business, because it is procedural in nature and only intended to update rule references that require commission compliance with new advisory committee procedures.

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 impact 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. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks from environmental exposure and is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures for the appointing of persons to commission-initiated advisory committees and executive director-created work groups, monitoring of the composition and activities of the committees and groups, and making information available on the commission website. The amendment also modifies the effect of other state or federal law on the membership of advisory committees and alters the procedures allowed to set the duration of advisory committees.

As for the four applicability requirements, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor is the rule proposed solely under the general powers of the commission. The commission invites public comment on the draft regulatory impact analysis determination.

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. This proposed rule amendment would assist in the implementation of HB 2912, §1.10 which authorizes the commission or the executive director to create and consult with advisory committees, work groups, and task forces and requires the commission to make reasonable attempts to have balanced representation on those entities, monitor the composition and activities of the entities and maintain that information in a form and location easily accessible to the public, including placing the information on the commission's website.

The proposed rule amendment also implements HB 2914 which modified the effect of other state or federal law on the membership of advisory committees and altered the procedures allowed to set the duration of advisory committees.

The proposed rule substantially advances those purposes by defining balanced representation, requiring the commission and executive director to make reasonable attempts to provide such balance, monitor the composition and activities through attendance lists, annual reports, and minutes if they are kept and make the information available on the commission's website. The proposed rule also substantially advances those purposes by utilizing the statutory language concerning the effect of state and federal law on membership and duration of advisory committees.

Promulgation and enforcement of the proposed rule amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule amendment does 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 exist in the absence of the amended rule.

Because the amended rule affects only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to the proposed rule.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 20, 2002, at 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The hearing is structured for the receipt of oral or

written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a 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 Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-068-005-AD. For further information, please contact Debra Barber at (512) 239-0412.

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; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendment implements TWC, Chapter 5, Texas Natural Resource Conservation Commission, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

§20.19. Working Committees and Groups.

Before initiating any formal rulemaking action, the commission or the executive director may convene informal working groups to obtain viewpoints and advice of interested persons. The commission or the executive director may also appoint working groups of experts or interested persons or representatives of the general public to advise it regarding any contemplated rulemaking. The powers of such working groups shall be advisory only. The processes established under Chapter 5, Subchapter C of this title (relating to Advisory Committees and Groups), shall be followed.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202274

Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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CHAPTER 21. WATER QUALITY FEES

30 TAC §§21.1 - 21.4

The Texas Natural Resource Conservation Commission (commission) proposes new Chapter 21, Water Quality Fees, §§21.1 - 21.4.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The rulemaking will implement this mandate by creating new Chapter 21 using language from 30 TAC Chapters 220, Regional Assessments of Water Quality and 305, Consolidated Permits, that is applicable to the WQAF and the WTF, respectively. As directed by the legislature, the proposed rules will establish a new consolidated methodology for assessing water quality fees. The consolidated water quality fee will replace both the current WQAF (referred to as the Clean Rivers Fee) and the WTF. This consolidated water quality fee is required by Texas Water Code (TWC), §26.0291 and will provide funding for the Texas Clean Rivers Program described in TWC, §26.0235 and funding for administration of water quality programs. Reasonable fees assessed to persons who benefit from the programs are necessary for these two programs to run efficiently and effectively.

Consolidation of the two current fees involves careful consideration of the requirements of the two programs, the amount of fees paid by holders of the various types, and sizes of wastewater permits. Historically, two methods have been used to calculate the annual fees assessed against wastewater permit holders. The WQAF calculation was relatively simple, assigning set dollar amounts for certain parameters. The wastewater treatment method was more complicated and comprehensive and included assigning points for parameters indicative of the facility's pollution potential. For the consolidated water quality fee, the calculation method has been kept as simple as possible, while following statutory criteria and using parameters which reflect the character and the pollution potential of the wastewater being considered. The result was a combination of the best aspects of both of the current methodologies used for the annual fees for wastewater permit holders. For water rights, the fee methodology was not changed.

The proposed fee structure is based upon permit limits. The commission solicits suggestions for a performance-based fee assessment that could be implemented during a subsequent rulemaking.

SECTION BY SECTION DISCUSSION

New §21.1, *Purpose and Scope*, would provide that the purpose and scope of the chapter is to implement the Water Quality Fee Program. This fee will be assessed against wastewater permit holders and holders of a water right permit or certificate of adjudication.

New §21.2, *Definitions and Abbreviations*, would include definitions and abbreviations used in this chapter.

New §21.3, *Fee Assessment*, would detail the methodology for the fee calculations and assessments for wastewater permits and water rights. The methodology for the consolidated water quality fee retained the basic calculation method related to flow volume and traditional pollutants used for the WQAF while including consideration of the "major" designation type of facility, toxic ratings for industrial permits, and storm water discharge authorization, and making reductions for permits that are inactive or are for land application facilities, in order to maintain the current fee base needed to support the programs. The methodology for assessment of fees for water rights is not changed.

New §21.4, *Fee Period, Adjustment, and Payment*, would explain the fee period, restrictions regarding adjustments, and requirements regarding payments of the water quality fee.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed new rules are in effect, there will be a 1/8% increase in revenues received from annual fees for wastewater permit holders. There will also be fiscal implications, which are not anticipated to be significant, to units of state and local government that operate facilities required to pay annual water quality fees. The only exception to this assessment is the City of Houston, which the commission estimates will be required to pay an additional $245,000 in water quality fees to comply with the proposed new rules. The total anticipated increased cost to units of state and local government due to implementation of the proposed rules is estimated to be approximately $660,000 annually.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF. HB 2912 also requires the commission to set fees to cover the reasonable costs necessary to administer and enforce the commission's water quality management programs and any other reasonable cost necessary to administer and enforce a water resource management program related to activities of persons required to pay the fees affected by this rulemaking. The proposed new rules create new Chapter 21, which will contain applicable rule language regarding annual fees for wastewater permit holders and water rights holders. This rulemaking also intends to modify the method used to calculate the current WQAF and WTF annual fees for wastewater permit holders. Units of government with water rights would not be affected by the proposed rules, because the method to determine annual fees for water rights holders is not revised by this rulemaking.

The proposed new rules would establish a new methodology for assessing annual fees for wastewater permit holders by basing the calculation for the annual fee on the authorized limits contained in the permit as of September 1 of each year. The proposed rules would increase the maximum annual fee for wastewater permit holders from $65,000 to $75,000.

A review of commission data indicates there are approximately 1,600 existing sites operated by units of government that would be affected by this rulemaking. The majority of these sites, approximately 75% or (1,200), will have their annual fees reduced by an average of approximately $800. The remaining 400 sites would be required to pay increased annual fees to comply with the proposed new rules. The majority of sites that would be required to pay increased fees per year, approximately 85% or (340), would pay less than $10,000 per site to comply. The average increased fee for these sites is approximately $1,300. The remaining 60 sites would pay between $10,000 to $35,000 per site to comply with the proposed new rules. These sites are generally located in large cities such as Austin, Corpus Christi, Dallas, El Paso, Garland, Laredo, San Antonio, Denton, Amarillo, and Houston. The combined total fee increase for cities that operate affected facilities is not anticipated to exceed $70,000 per year. The only exception to this assessment is the City of Houston, which the commission estimates will be required to pay an additional $245,000 in fees to comply with the proposed new rules. The total anticipated increased cost to units of state and local government due to implementation of the proposed rules is estimated to be approximately $660,000 annually.

The commission anticipates that net revenues derived from the consolidated annual water quality fees from units of government and industry will increase by approximately $314,000 per year. The additional funding, if appropriated, will be utilized by the commission to pay the expenses of the commission's Water Quality Administration and Texas Clean Rivers Programs.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of implementing the new rules will be compliance with legislative requirements to consolidate the WQAF and the WTF into one chapter.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF. HB 2912 also requires the commission to set fees to cover the reasonable costs necessary to administer and enforce the commission's water quality management programs and any other reasonable cost necessary to administer and enforce a water resource management program related to activities of persons required to pay the fees affected by this rulemaking. The proposed new rules create new Chapter 21, which will contain applicable rule language regarding annual fees for wastewater permit holders and water rights holders. This rulemaking also intends to modify the method used to calculate the current annual WQAF and WTF fee for wastewater permit holders. Individuals and businesses with water rights would not be affected by the proposed rules, because the method to determine annual fees for water rights holders is not revised by this rulemaking.

A review of commission data indicates there are approximately 2,100 existing sites operated by private companies providing wastewater services to units of government and other businesses. The majority of these sites, approximately 58% or (1,215), will have their annual fees reduced by an average of approximately $1,300. The remaining 885 sites would be required to pay an increased annual fee to comply with the proposed new rules. The majority of sites that would be required to pay increased fees per year, approximately 94% or (835), would pay less than $10,000 per site to comply. The average increased fee for these sites is approximately $350. The remaining 50 sites would pay between $10,000 to $38,000 per site to comply with the proposed new rules. These sites are primarily located at large industrial sites. The combined total fee increase for individual businesses that operate affected facilities is not anticipated to exceed $70,000 per year. The only exception to this assessment is for Dupont, which the commission estimates will be required to pay an additional $105,000 in fees to comply

with the proposed new rules. The commission anticipates implementation of the proposed revised fee schedule will result in an approximate $346,000 savings for businesses per year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of administration or enforcement of the proposed new rules, which are intended to implement certain provisions of HB 2912, 77th Legislature, 2001. The bill required the commission to consolidate the WQAF and the WTF. HB 2912 also requires the commission to set fees to cover the reasonable costs necessary to administer and enforce the commission's water quality management programs and any other reasonable cost necessary to administer and enforce a water resource management program related to activities of persons required to pay the fees affected by this rulemaking. The proposed new rules create new Chapter 21, which will contain applicable rule language regarding annual fees for wastewater permit holders and water rights holders. This rulemaking also intends to modify the method used to calculate the current annual WAQF and WTF fees for wastewater permit holders. Small and micro-businesses with water rights would not be affected by the proposed amendments, because the method to determine annual fees for water rights holders is not revised by this rulemaking.

A review of commission data indicates there are approximately 2,100 existing sites operated by private companies providing wastewater services to units of government and other businesses. Many of these sites are anticipated to be small or micro-businesses. The majority of these sites, approximately 58% (or 1,215), will have their annual fees reduced by an average of approximately $1,300. The remaining 885 sites would be required to pay increased annual fees to comply with the proposed amendments. The commission anticipates that the vast majority of sites required to pay additional fees would not be small or micro-businesses. For those sites that are considered to be small or micro-businesses, the commission anticipates they would pay less than $1,000 per year from increased fees to comply with the proposed new rules.

The following is an analysis of the costs per employee for small and micro-businesses that are required to pay additional fee. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would have to pay up to an additional $10 per employee to comply with the proposed new rules. A micro-business would have to pay up to an additional $50 per employee to comply with the proposed new rules.

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 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 rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to create new Chapter 21 using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. The consolidation of these fees does not affect the environment or public health. Also, the rulemaking does not affect the economy, productivity, competition, or jobs because it is a combining and restructuring of water fees to be paid for the water quality program. While there may be increased fees to some entities, there will also be reduced fees to some entities, and this should not impact the economy or jobs.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to create new Chapter 21, using language from Chapters 220 and 305 that is applicable to the WQAF and the WTF, respectively. These new rules will not burden private real property because they are fee rules which relate to payment for commission water quality programs.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the proposed new 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, nor do they affect any action or authorization identified in §505.11. This proposed rulemaking concerns only administrative rules of the commission intended to establish a new consolidated methodology for assessing fees as directed by the legislature as a replacement for the WQAF and the WTF. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking with the CMP may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 21, 2002 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy,

Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

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 2001-098-220-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The new rules are proposed 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; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the Texas Clean Rivers Program.

The proposed new rules implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF. The new rules also implement Senate Bill 2, §2.01, 77th Legislature, 2001, which amends TWC, §11.002(12) to change the definition of agriculture to include several activities, including irrigation.

§21.1. Purpose and Scope.

(a) It is the purpose of this chapter to implement the Water Quality Fee Program.

(b) An annual fee will be assessed against wastewater permit holders authorized to treat or discharge wastewater into or adjacent to the waters in the state under Texas Water Code (TWC), Chapter 26, and against each person holding a right acquired under authority of TWC, Chapter 11, and the rules of the commission to impound, divert, or use state water, except for those exemptions specified in §21.3(c) of this chapter (relating to Fee Assessment). Only one fee is assessed for each permit.

(c) The fees to be assessed under this chapter do not apply to general permits.

(d) The fee shall be in proportion to the level of authorization for use of state water or for the treatment or discharge of wastewater.

(e) All resulting revenue shall be deposited in the Water Resources Management Account for the purpose of supplementing other revenue appropriated by the legislature to pay the expenses of the commission in the following programs:

(1) Water quality administration, including, but not limited to, inspection of wastewater treatment facilities and enforcement of the provisions of TWC, Chapter 26, the rules and orders of the commission related to wastewater discharges and waste treatment facilities, and the provisions of commission permits governing wastewater discharges and wastewater treatment facilities;

(2) The Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)); and

(3) Any other water resource management programs reasonably related to the activities of the persons required to pay a fee under TWC, §26.0291.

§21.2. Definitions and Abbreviations.

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

(1) Aquaculture -- The commercial propagation and/or rearing of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) Flow -- The total by volume of all wastewater discharges authorized under a permit issued in accordance with Texas Water Code (TWC), Chapter 26, expressed in order of preference, as an average flow per day, an annual average, a maximum flow per day, or an annual maximum, exclusive of variable or occasional storm water discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional storm water discharges.

(3) Flow type --

(A) Contaminated -- Sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters, or flows containing more than one million gallons per day process wastewater regardless of the percent of total comprised of process wastewater.

(B) Uncontaminated -- Non-contact cooling water or mixed flows containing not more than one million gallons per day of process wastewater, with the overall mixture being at least 90% non-contact cooling water.

(4) Inactive permit -- A permit which authorizes a waste treatment facility which is not yet operational or where operation has been suspended, and where the commission has designated the permit as inactive.

(5) Land application (retention) permit -- A permit which does not authorize the discharge of wastewater into surface waters in the state, including, but not limited to, permits for systems with evaporation ponds or irrigation systems.

(6) Major permit -- A permit designated as a major permit, by either EPA or the commission and subject to provisions of the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System's permit authority.

(7) Parameter -- A variable which defines a set of physical properties whose values determine the pollution potential for a waste discharge.

(8) Report only permit -- A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

(9) State water -- The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the

state or by utilizing any facilities owned or operated by the state. Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water. State water does not include percolating groundwater, nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(10) Storm water authorization -- Some individual permits authorize the variable or occasional discharge of accumulated storm water and storm water runoff, but without any specific limitation on the volume of discharge. Storm water discharge may be the only discharge authorized in a permit, or it may be included in addition to other parameters.

(11) Toxicity rating -- A graduated rating, with Groups I - VI, assigned to an industrial permit based on the source(s) of wastewater, the standard industrial classification of the facility, and the specific type of operation.

(12) Traditional pollutants -- Certain parameters typically found in wastewater permits, specifically oxygen demand (biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC)), total suspended solids (TSS), and ammonia (NH_3).

(13) Uses of state water -- Types of use of surface water authorized by water rights under TWC, Chapter 11.

(A) Agricultural use -- Any use or activity involving agriculture, including irrigation. The definition of "agriculture use" is the same as in TWC, §11.002(12), as follows:

(i) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(ii) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(iii) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(iv) raising or keeping equine animals, wildlife management; and

(v) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purposes of participating in any governmental program or normal crop or livestock rotation procedure.

(B) Consumptive use -- The use of state water for domestic and municipal, industrial, agricultural, or mining purposes, consistent with the meaning of these uses for which water may be appropriated under TWC, Chapter 11.

(C) Hydropower use -- The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(D) Industrial use -- The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including, without limitation, commercial feedlot operations, commercial fish and shellfish production, and the development of power by means other than hydroelectric.

(E) Irrigation use -- The use of state water for the irrigation of crops, trees, and pasture land including, but not, limited to golf courses and parks which do not receive water through a municipal distribution system. This use is now part of the definition of agriculture use in TWC, §11.002(12).

(F) Mariculture use -- The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water. This use is exempt from the need for a water right.

(G) Mining use -- The use of state water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(H) Municipal -- The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, pursuant to a TWC, Chapter 26, permit where:

(i) the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) the application site is within an area for which the commission has adopted a no-discharge rule.

(I) Non-consumptive uses -- The use of state water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation, and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under TWC, Chapter 11.

(J) Other use -- Any beneficial use of state water not otherwise defined herein.

(K) Recharge -- The use of a surface source of state water for injection into an aquifer, or for increasing the amount of natural recharge to an underground aquifer.

(L) Recreational use -- The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(14) Wastewater permit -- An order issued by the commission in accordance with the procedures prescribed by TWC, Chapter 26, establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made, and including those permits issued under the authority of TWC, Chapter 26, and other statutory provisions (such as the Texas Health and Safety Code, Chapter 361) for the treatment or discharge of wastewater. For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule and registrations and similar authorizations other than general permits.

(A) Individual permit -- A wastewater permit, as defined in TWC, §26.001, including registrations and permits by rule, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in TWC, Chapter 26 (other than TWC, §26.040).

(B) General permit -- A wastewater permit issued under the provisions of §205.1 of this title (relating to Definitions) authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by TWC, §26.040.

(15) Water right -- A right acquired under authority of TWC, Chapter 11 and the rules of the commission to impound, divert, store, convey, or use state water.

(b) Abbreviations. The following abbreviations apply to this chapter.

(1) (lb/day) -- Pounds per day.

(2) mgpd -- Million gallons per day.

(3) mg/l -- Milligrams per liter. For fee calculations, mg/l are converted to pounds per day (lb/day) using mg/l multiplied by flow volume in mgd, and multiplied by 8.34 equals lb/day.

(4) SIC -- Standard Industrial Classification assigned to a facility generating wastewater.

§21.3. Fee Assessment.

(a) The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year, without regard to the actual amount or quality of effluent discharged or the actual amount of water used.

(b) Assessment for wastewater permits.

(1) An annual fee is assessed against each person holding a wastewater permit. A separate fee is assessed for each wastewater permit.

(2) The maximum fee which may be assessed any permit is $75,000, except that the maximum for an aquaculture permit is $5,000. The minimum fee for an active permit is $1,000. The minimum fee for an inactive permit is $500.

(3) In assessing a fee under this chapter, the commission considers the following factors:

(A) flow volume, and type;

(B) traditional pollutants;

(C) toxicity rating;

(D) storm water discharge;

(E) major designation;

(F) active or inactive status;

(G) discharge or retention;

(H) the designated uses and ranking classification of waters affected by waste discharges; and

(I) the costs of administering the following commission programs:

(i) water quality administration, including inspection of waste treatment facilities and enforcement of the provisions of Texas Water Code (TWC), Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities;

(ii) the Texas Clean Rivers Program, under TWC, §26.0135, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001 (5)).

(4) For the purpose of fee calculation, chemical oxygen demand (COD) and total organic carbon (TOC) are converted to biochemical oxygen demand (BOD) values and the highest value is used for fee calculation. The conversion rate for TOC is three pounds of TOC is equal to one pound of BOD (3:1). The conversion rate for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(5) Fee rate schedule. Except as provided in paragraph (6) of this subsection, the fee shall be determined as the sum of the following factors:

(A) contaminated flow, $700 per MGD;

(B) uncontaminated flow, $13 per MGD;

(C) traditional pollutants, $15 per pound per day;

(D) toxic rating for industrial discharges:

(i) Group I, $200;

(ii) Group II, $700;

(iii) Group III, $1,050;

(iv) Group IV, $1,575;

(v) Group V, $3,150; and

(vi) Group VI, $6,300;

(E) major permit designation, $2,000; and

(F) storm water authorization, $500.

(6) For the types of permits listed in this paragraph, these additional guidelines will apply in determining the fee assessment.

(A) Land application (retention) permits. The fee assessed a land application permit shall be 50% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an active land application permit be less than $1,000 per year.

(B) Inactive permits. The fee assessed an inactive permit shall be 50% of that calculated under paragraph (5) of this subsection. In the event an inactive permit is for a land application operation, the fee assessed shall be 25% of that calculated under paragraph (5) of this subsection. However, in no event shall the fee for an inactive permit be less than $500 per year.

(C) Storm water only permits. The fee for an active permit which authorizes discharge of storm water only, with no other wastewater, is $500.

(D) Aquaculture permits.

(i) In determining the flow volume to be used in fee calculation for an aquaculture production facility under paragraph (5) of this subsection, the flow for the facility shall be the facility's permitted annual average flow, or the facility's projected annual average flow if the permit does not have an annual average flow limitation.

(ii) If the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 preceding the fee year and shall be signed and certified as required by §305.44 of this title (relating to Signatories to Applications), and that amount will be used for fee calculation.

(iii) The annual fee for aquaculture production facilities shall not exceed $5,000.

(7) A multiplier may be applied to adjust the total fee per permit, which would also adjust the total assessment for all permits under the Water Quality Fee Program. At the time of initial implementation, the multiplier is set at 1.0, with no impact on the fees.

(c) Assessment for water rights.

(1) An annual fee is assessed against each person holding a water right, except for those exemptions specified in this section. A

separate fee is assessed for each water right. These fees do not apply to water uses, including domestic and livestock use, which are exempt from the need for authorization from the commission under TWC, Chapter 11.

(2) This fee will apply to all municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (b) of this section, and to all other types of water rights except agriculture water rights and certain hydroelectric water rights described in paragraph (6) of this subsection.

(3) The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use shall be $.22 per acre-foot up to 20,000 acre-feet, and $.08 per acre-foot thereafter.

(4) An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described in paragraph (5) of this subsection.

(5) Except for water rights for hydropower purposes, the fee shall be $.021 per acre-foot for water rights for non-consumptive use above 2,500 acre-feet per year, up to 50,000 acre-feet, and $.0007 per acre-foot thereafter.

(6) The fee for water rights for hydropower purposes shall be $.04 per acre-foot per year up to 100,000 acre-feet, and $.004 per acre-foot thereafter. This fee shall not be assessed against a holder of a non-priority hydroelectric right who owns or operates privately-owned facilities which collectively have a capacity of less than two megawatts.

(7) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use, may be exempted from the assessment of a fee under paragraph (3) of this subsection.

§21.4. Fee Period, Adjustment, and Payment.

(a) The annual water quality fee assessment is for the period from September 1 through August 31, and is based on the authorized permit or water right limits as of September 1 each year, as stated in §21.3(a) of this title (relating to Fee Assessment).

(b) New or amended wastewater permits and water rights granted after September 1 will be billed for the new or amended authorization in the annual assessment for the fee year subsequent to the fee year in which the new authorization was granted.

(c) Cancellation or revocation, whether by voluntary action on the part of the holder of a wastewater permit or a water right, or as a result of proceedings initiated by the commission, will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid.

(d) Transfer of ownership of a wastewater permit or a water right will not constitute grounds for a change in the amount of a water quality fee previously assessed, or for a refund of fees previously paid. The commission shall not process a transfer request until all annual fees owed the commission by the applicant, or for the permitted facility, are paid in full. Any wastewater permit holder or water right holder to whom a permit is transferred shall be liable for payment of any associated outstanding fees and penalties owed the commission.

(e) Annual water quality fees are payable within 30 days of the billing date each year. Fees shall be paid by check, certified check or money order payable to the Texas Commission on Environmental Quality (to be effective September 1, 2002).

(f) Water quality fees are payable regardless of whether the permitted wastewater facility actually is constructed or in operation, or whether any authorized water right facility has been constructed or diversion of state water made.

(g) Owners or operators of a facility failing to make payment of the fees imposed under this chapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees). In addition, failure to make payment in accordance with this chapter constitutes a violation subject to enforcement pursuant to the provisions of Texas Water Code, §26.123.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202309
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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CHAPTER 39. PUBLIC NOTICE

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§39.403, 39.405, 39.501, and 39.503.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of this rulemaking is to implement legislation relating to public notice and meeting requirements. House Bill (HB) 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001, §2.01, added Texas Health and Safety Code (THSC), §361.0666, Public Meeting and Notice for Solid Waste Facilities. The proposed amendments to §39.501 and §39.503 address the amendments to THSC, §361.0666, which added certain public meeting requirements for facilities that accept municipal solid waste. HB 2947 (an act relating to the posting of notice for water discharge permits), 77th Legislature, 2001, amended Texas Water Code (TWC), §5.552, Notice of Intent to Obtain Permit. The proposed amendments to §39.405 address the requirements of amended TWC, §5.552 relating to newspaper publication requirements. Senate Bill (SB) 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact) added new Texas Clean Air Act (TCAA), §382.05197, and changed the public notice requirements applicable to multiple plant permits. The proposed amendments to §39.403 address the requirements of new TCAA, §382.05197. The proposal also contains grammatical and statutory reference revisions, cross-reference corrections, and changes which conform the rule language to *Texas Register* and agency formatting requirements.

SECTION BY SECTION DISCUSSION

Section 39.403, Applicability, is proposed to be amended to address requirements of new TCAA, §382.01597, relating to notice and hearing requirements for multiple plant permit applications. Proposed new paragraph (13) of subsection (b) specifies that notices for multiple plant permits are subject to applicable requirements under Chapter 39. Existing paragraph (13) is proposed to

be re- designated as paragraph (14). Subsection (d) is proposed to be amended to specify that initial issuance of certain multiple plant permit applications are subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits except as otherwise provided in 30 TAC §116.1040, as proposed for amendment in a concurrent rulemaking in this issue of the *Texas Register*. New TCAA, §382.05197(c) provides that public participation for a multiple plant permit application filed before September 1, 2001, will be done in the same manner as provided by TCAA, §382.0561, Federal Operating Permit, and §382.0562, Notice of Decision. Because the commission has developed public notice and participation requirements implementing similar language in TCAA, §382.05191 for initial issuance of voluntary emission reduction permits (VERP) and initial issuance of electric generating facility permits, the existing Chapter 39 requirements are proposed to also apply to certain multiple plant permits under 30 TAC Chapter 116, Subchapter J.

Section 39.405, General Notice Provisions, is proposed to be amended under subsection (f) to address the HB 2947 requirement that certain notices of intent to obtain a permit must be published in a newspaper of general circulation in a municipality, if the facility to which the application relates is located or proposed to be located in the municipality. This proposed rule change reflects the change to TWC, §5.552(b)(1), which previously provided that for all applications governed by this provision, the applicant was required to publish notice in the newspaper of largest circulation in the county in which the facility was located or proposed to be located. Section 39.405(f) is also proposed to be amended to make clear that the requirements of HB 2947 do not apply to air applications which remain subject to the newspaper publication requirements of TCAA, §382.056(a), and are unchanged by HB 2947.

Sections 39.501 and 39.503 are proposed to be amended to address the public meeting and notice requirements for solid waste facilities under the HB 2912, Article 2 amendments to THSC, §361.0666. Consistent with the provisions of HB 2912, these proposed amendments would require an applicant for a permit under THSC, Chapter 361, for a new facility that would accept municipal solid waste, to hold a public meeting in the county in which the proposed facility is to be located, publish notice of the public meeting, and submit an affidavit certifying the notice was published as required.

Section 39.501, Application for Municipal Solid Waste Permit, is proposed to be amended under subsection (e). Under paragraph (1)(B), the proposed language would require an applicant for a new municipal solid waste permit to hold a public meeting in the county in which the facility is proposed to be located, and would require that the meeting be held before the 45th day after the date the application is filed. Language from existing paragraph (1) concerning the Administrative Procedure Act (APA) and the local review process is proposed to be renumbered as paragraph (2), and the incorrect reference to subsection (a) is proposed to be corrected to subsection (b). In addition, proposed paragraph (2) would add the words "paragraph (1)(A) of" in order to more accurately reflect the allowance that a public meeting held as part of a local review committee process meets the requirements for a meeting to be held by the agency, if public notice is provided under this subsection. The language from existing paragraph (2) is proposed to be renumbered as paragraph (3), grammatically revised, and expanded to reflect the requirements of THSC, §361.0666(d), relating to content of notice for public meetings held by the applicant. In addition, the rule provides that the text of notice shall include the location, time, and date of the meeting as well as the name, address, and telephone number for the contact person for the applicant as proposed in subparagraphs (A) - (F) of paragraph (3). The language from existing paragraph (3) is proposed to be renumbered as paragraph (4). Because current §39.405(e) already requires the applicant to submit an affidavit certifying compliance with applicable notice requirements, no other changes are proposed to implement the new statutory requirements.

Section 39.503, Application for Industrial or Hazardous Waste Facility Permit, is proposed to be amended under subsection (e) to mirror the changes proposed to §39.501 in this rulemaking. The provisions of newly enacted THSC, §361.0666, apply not only to new municipal solid waste facilities, but also to any new facilities that accept municipal solid waste. Since under certain circumstances, industrial or hazardous waste facilities may also accept municipal solid wastes, the requirements of the new statutory provisions also apply to these facilities. Thus, the commission proposes the corresponding changes necessary to implement these provisions for industrial or hazardous waste facilities.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency due to administration or enforcement of the proposed amendments. There may be public notice costs, which are not anticipated to be significant, for units of state and local government that apply for a municipal solid waste permit.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2947, which modified existing public notice and meeting requirements. HB 2912 requires public notices, published by the commission or by a person regulated by the commission, to include a detailed beginning statement of the subject of the notice. This bill also requires applicants for a new facility that would accept municipal solid waste to convene a public meeting, and provide public notice, in the county in which the proposed site is to be located. HB 2947 allows applicants for certain permits to publish notice in the newspaper of general circulation in the municipality in which the facility is to be located. Currently, applicants for these permits have to publish notice in a newspaper of largest circulation in the county in which the proposed site is located.

The commission does not anticipate the statement or public meeting provisions of HB 2912 will result in significant fiscal implications for units of state and local government. The commission estimates that the HB 2947 provision may result in economic benefits, which are not anticipated to be significant, to units of government applying for certain permits, because the required notice would only have to be published in a newspaper of general circulation in the municipality in which the facility is to be located, instead of in a newspaper that covered the entire county.

The commission estimates that there will be public notice costs, which are not anticipated to be significant, to units of state and local government that apply for a new permit and would accept

municipal solid waste. The commission currently processes approximately 40 new applications for municipal solid waste permits per year, most of which are submitted by units of government. The proposed amendments would require an applicant to provide notice of the public meeting at least once each week during the three weeks prior to the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates that a large city newspaper would charge approximately $450 for the public notice. A smaller city newspaper would charge approximately $20 for the public notice.

PUBLIC BENEFITS AND COSTS

Mr. Davis 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 implementing the amendments will be improved public notification and input due to revised public notice and meeting requirements.

This rulemaking is intended to implement certain provisions of HB 2912 and HB 2947, which modified existing public notice and meeting requirements. HB 2912 requires public notices, published by the commission or by a person regulated by the commission, to include a detailed beginning statement of the subject of the notice. This bill also requires applicants for a new facility that would accept municipal solid waste to convene a public meeting, and provide public notice, in the county in which the proposed site is to be located. HB 2947 allows applicants for certain permits to publish notice in the newspaper of general circulation in the municipality in which the facility is to be located. Currently, applicants for these permits have to publish notice in a newspaper of largest circulation in the county in which the proposed site is located.

The commission does not anticipate the statement or public meeting provisions of HB 2912 will result in significant fiscal implications for individuals and businesses. The commission estimates that the HB 2947 provision may result in economic benefits, which are not anticipated to be significant, to businesses applying for certain permits, because the required notice would only have to be published in a newspaper of general circulation in the municipality in which the facility is to be located, instead of in a newspaper that covered the entire county.

The commission estimates that there will be public notice costs, which are not anticipated to be significant, to individuals and businesses that apply for a new permit and would accept municipal solid waste. The commission currently processes approximately 40 new applications for municipal solid waste permits per year, some of which are submitted by private businesses. The proposed amendments would require an applicant to provide notice of the public meeting at least once each week during the three weeks prior to the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates that a large city newspaper would charge approximately $450 for the public notice. A smaller city newspaper would charge approximately $20 for the public notice.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of administration or enforcement of the proposed amendments, which are intended to implement provisions of HB 2912 and HB 2947, which modified existing public notice and meeting requirements. HB 2912 requires public notices, published by the commission or by a person regulated by the commission, to include a detailed beginning statement of the subject of the notice. This bill also requires applicants for a new facility that would accept municipal solid waste to convene a public meeting, and provide public notice, in the county in which the proposed site is to be located. HB 2947 allows applicants for certain permits to publish notice in the newspaper of general circulation in the municipality in which the facility is to be located. Currently, applicants for water discharge permits have to publish notice in a newspaper of largest circulation in the county in which the proposed site is located.

The commission does not anticipate the statement or public meeting provisions of HB 2912 will result in significant fiscal implications for small and micro-businesses. The commission estimates that the HB 2947 provision may result in economic benefits, which are not anticipated to be significant, to small and micro-businesses applying for certain permits, because the required notice would only have to be published in a newspaper of general circulation in the municipality in which the facility is to be located, instead of in a newspaper that covered the entire county.

The commission estimates that there will be public notice costs, which are not anticipated to be significant, to small and micro-businesses that apply for a new permit for a facility that would accept municipal solid waste. The commission currently processes approximately 40 new applications for municipal solid waste permits per year, some of which are submitted by small and micro-businesses. The proposed amendments would require an applicant to provide notice of the public meeting at least once each week during the three weeks prior to the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates that a large city newspaper would charge approximately $450 for the public notice. A smaller city newspaper would charge approximately $20 for the public notice.

The following is an analysis of the costs per employee for small and micro-businesses that are required to provide public notice concerning an application for a municipal solid waste permit. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would have to pay up to an additional $5.00 per employee to comply with the proposed amendments. A micro-business would have to pay up to an additional $23 per employee to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required

because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments 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 proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning public notice and public meetings, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rules are major environmental rules, a draft regulatory impact assessment is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to HB 2912, HB 2947, and SB 688, and does not exceed the requirements of these bills. This proposal 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. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state laws (i.e., Texas Government Code, §2001.004; TWC, §5.129 and §5.552; and THSC, §361.0666 and §382.05197). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for public notice and public meetings. As added by HB 2947, TWC, §5.552 requires that certain notices of intent to obtain a permit must be published in a newspaper of general circulation in a municipality, if the facility to which the application relates is located or proposed to be located in the municipality. As added by HB 2912, THSC, §361.0666 requires that an applicant for a permit under THSC, Chapter 361, for a new facility that would accept municipal solid waste, must hold a public meeting in the county in which the proposed facility is to be located before the 45th day after the application is filed. SB 688 added THSC, §382.05197, which changed the public notice requirements applicable to certain multiple plant permits. The proposed rules will substantially advance these stated purposes by providing specific procedural requirements in response to legislative changes. Promulgation and enforcement of the rules will not burden private real property. The proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.) and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (31 TAC Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq*.).

Interested persons may submit comments on the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin at 2:00 p.m. on May 21, 2002 at the Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 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 Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.403, §39.405

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 when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.552, which requires that certain notices of intent to obtain a permit must be published in a newspaper of general circulation in a municipality, if the facility to which the application relates is located or proposed to be located in the municipality; THSC, §361.0666, which requires that an applicant for a permit under THSC, Chapter 361, for a new facility that accepts municipal solid waste hold a public meeting in the county in which the proposed facility is to be located before the 45th day after the application is filed; and THSC, §382.05197, which sets forth certain notice requirements for multiple plant permits.

The proposed amendments implement TWC, §§5.103, 5.105, 5.129, and 5.552; and THSC, §361.0666 and §382.05197.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E [F] of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications [and Water Quality Management Plans]; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications [; and Public Notice for Radioactive Material Licenses]). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection [subsections] (c)(9) and (10), is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

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

(b) As specified in those subchapters, Subchapters H - M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under [the Texas Solid Waste Disposal Act,] Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

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

(3) applications for underground injection well permits under TWC [Texas Water Code], Chapter 27, or under THSC [the Texas Solid Waste Disposal Act, Texas Health and Safety Code], Chapter 361;

(4) - (6) (No change.)

(7) applications for consolidated permit processing and consolidated permits processed under TWC [Texas Water Code], Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

(8) applications for air quality permits under THSC [Texas Health and Safety Code], §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

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

(C) other changes when the executive director determines that:

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

(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity; [or]

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

(11) applications for voluntary emission reduction permits under THSC [Texas Health and Safety Code], §382.0519;

(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;

(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and

(14) [(13)] Water Quality Management Plan (WQMP) updates processed under TWC [Texas Water Code], Chapter 26, Subchapter B.

(c) (No change.)

(d) Applications for initial issuance of voluntary emission reduction permits under THSC [Texas Health and Safety Code], §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Voluntary Emission Reduction Permits), except that any reference to requests for reconsideration or contested case hearings in §39.409 of this title or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) (No change.)

§39.405. General Notice Provisions.

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

(f) Published Notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in a newspaper of general circulation in the municipality. For air applications subject to §39.603 of this title (relating to Newspaper Notice), applicants shall instead publish notice as required by that rule [~~except for air applications required to publish in a newspaper of general circulation in a municipality under §39.603 of this title (relating to Newspaper Notice)~~]; and

(2) (No change.)

(g) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202267
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.501, §39.503

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 when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.552, which requires that certain notices of intent to obtain a permit must be published in a newspaper of general circulation in a municipality, if the facility to which the application relates is located or proposed to be located in the municipality; THSC, §361.0666, which requires that an applicant for a permit under THSC, Chapter 361, for a new facility that accepts municipal solid waste hold a public meeting in the county in which the proposed facility is to be located before the 45th day after the application is filed; and THSC, §382.05197, which sets forth certain notice requirements for multiple plant permits.

The proposed amendments implement TWC, §§5.103, 5.105, 5.129, and 5.552; and THSC, §361.0666 and §382.05197.

§39.501. Application for Municipal Solid Waste Permit.

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

(e) Notice of public meeting.

(1) If an applicant [~~the application~~] proposes a new facility: [~~,~~]

(A) the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; and [~~.~~]

(B) the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(2) A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [~~(a)~~] of this section meets the requirements of paragraph (1)(A) of this subsection if public notice is provided under this subsection.

(3) [~~(2)~~] The applicant shall publish notice of any [~~the~~] public meeting under this subsection, in accordance with [~~, as required by~~] §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters). For public meetings under paragraph (1)(B) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead shall contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(4) [~~(3)~~] For public meetings held by the agency under paragraph (1)(A) of this subsection, the [~~The~~] chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(f) (No change.)

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

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

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) (No change.)

(2) After the executive director determines that the application is administratively complete:

(A) notice shall be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and [~~.~~]

(B) (No change.)

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In

addition to the requirements of §39.419 of this title, the following requirements apply.

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

(3) The notice shall comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an [~~the~~] applicant proposes a new hazardous waste facility, the agency [~~executive director~~] shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application.

(2) If an [~~the~~] applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests.

(3) If an applicant proposes a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant shall hold a public meeting in the county in which the facility is proposed to be located. This meeting must be held before the 45th day after the date the application is filed.

(4) A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [~~(a)~~] of this section meets the requirements of paragraph (1) of this subsection if public notice is provided under this subsection.

(5) [~~(2)~~] The applicant shall publish notice of any [~~the~~] public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. [~~The applicant shall publish notice under §39.405(f)(2) of this title.~~] The published notice shall be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least 3 inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead shall contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(6) [~~(3)~~] For public meetings held by the agency under paragraph (1) of this subsection, the [~~The~~] chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202268
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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CHAPTER 90. REGULATORY FLEXIBILITY AND ENVIRONMENTAL MANAGEMENT SYSTEMS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §90.1, Purpose, and §90.10, Application for a Regulatory Flexibility Order.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these revisions to Chapter 90 in order to implement statutory changes to Texas Water Code (TWC), §5.123, Regulatory Flexibility, redesignated as TWC, §5.758, Regulatory Flexibility. The commission is also proposing, in concurrent action, to review the rules in Chapter 90 (added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a)). The notice of the intention to review can be found in the Rule Review section of this issue of the *Texas Register*.

The proposed rulemaking implements House Bill (HB) 2912, §4.02 (77th Legislature, 2001). HB 2912, §4.02, amended TWC, §5.123 and redesignated it as the new TWC, §5.758. The amendments, which became effective on September 1, 2001, require that applicants demonstrate that the alternative control measures provide greater protection for the environment and the public health, compared with the specific requirements that would otherwise apply, and that applicants present documented evidence that the benefits will occur. TWC, §5.123 previously required that an exemption proposed be "at least as" protective as the specific requirement being exempted and did not require documented evidence. This proposed rulemaking will amend §90.10(b) to conform with amended language in the TWC requiring that proposals to control pollution by alternative methods or standards be more protective than the existing rule or law, and that applicants must provide documented evidence that benefits will occur.

New TWC, §5.758 is intended to allow entities currently regulated by the commission the flexibility to use alternative methods to meet statutory or regulatory requirements. The proposed amendments will require that the benefits gained through the alternative methods are greater than the current requirements, and that the applicant provide documented evidence that the benefits will occur through the alternative methods.

SECTION BY SECTION DISCUSSION

Section 90.1 is proposed to be amended to correct the TWC citation from §5.123 to §5.758.

Section 90.10(b)(2)(A) is proposed to be amended to require that the detailed explanation in applications for regulatory flexibility show that the alternate methods or standards would be more protective of the environment. A new subsection (b)(3) is proposed to require that a regulatory flexibility order application show documented evidence of the benefits to environmental

quality that will result from the proposal. All subsequent paragraphs in subsection (b) are proposed to be renumbered.

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 amendments are in effect, there may be fiscal implications, which could be significant, for units of state and local government that voluntarily seek regulatory flexibility orders. However, the commission anticipates the costs resulting from voluntary participation in the program would likely be offset by anticipated economic benefits to be gained from receiving authority to operate a facility under a regulatory flexibility order. The proposed amendments would only affect units of state and local government that decide to voluntarily apply for regulatory flexibility orders. All other units of state and local government would not be affected by this rulemaking.

This rulemaking is intended to implement certain provisions of HB 2912 (an Act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001. In order to qualify for regulatory flexibility orders, the bill requires all applicants after September 1, 2001 to provide documented evidence which demonstrates that the provisions of the proposed alternative control measures would provide greater environmental protection compared to existing commission requirements. The commission currently requires an applicant to provide a narrative description of the alternative control measure, and a demonstration that the proposal would provide environmental protection equivalent to existing requirements.

All units of state and local government that operate equipment required to comply with pollution standards under the commission's air, water, or waste permit programs could apply for regulatory flexibility orders. The only exception would be low-level radioactive waste storage, handling, or disposal facilities, which would not be allowed to seek regulatory flexibility under this chapter.

The commission anticipates the only potential additional costs to applicants applying for voluntary regulatory flexibility orders will be costs associated with environmental and engineering testing. Although testing is not a specific requirement, the commission anticipates applicants will have to perform some type of testing beyond what is currently required in order to provide the commission with sufficient evidence that the proposals will exceed existing commission requirements. It is not known how many applicants conducted environmental and engineering testing in the past. The commission estimates there will be a wide range in testing costs, depending on the complexity and scope of the proposal. Testing costs are estimated to range from $100 for simple water analysis testing to over $250,000 for complex hazardous waste combustion testing.

The commission anticipates that units of state and local government that decide to apply for regulatory flexibility orders will take these costs into consideration; therefore, the increased testing costs are not anticipated to exceed the actual economic benefits to be gained from receiving authority to operate a facility under a regulatory flexibility order. The proposed amendments are not anticipated to pose a significant fiscal implication for the commission. Since the program was implemented in 1997, the commission has received seven applications for regulatory flexibility. The annual number of regulatory flexibility order applications submitted to the commission are not anticipated to increase significantly due to implementation of the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be potentially increased environmental protection due to the requirement that proposals for regulatory flexibility must exceed existing commission environmental standards.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001. In order to qualify for regulatory flexibility orders, the bill requires all applicants after September 1, 2001 to provide documented evidence which demonstrates that the alternative control measures would provide greater environmental protection compared to existing commission requirements. The commission currently requires an applicant to provide a narrative description of the alternative control measure, and a demonstration that the proposal would provide environmental protection equivalent to existing requirements.

All individuals and businesses that operate equipment required to comply with pollution standards under the commission's air, water, or waste permit programs could apply for regulatory flexibility orders. The only exception would be low-level radioactive waste storage, handling, or disposal facilities, which would not be allowed to seek regulatory flexibility under this chapter.

The commission anticipates the only potential additional costs to applicants applying for voluntary regulatory flexibility orders will be costs associated with environmental and engineering testing. Although testing is not a specific requirement, the commission anticipates applicants will have to perform some type of testing beyond what is currently required in order to provide the commission with sufficient evidence that the proposals will exceed existing commission requirements. It is not known how many applicants conducted environmental and engineering testing in the past. The commission estimates there will be a wide range in testing costs, depending on the complexity and scope of the proposals. Testing costs are estimated to range from $100 for simple water analysis testing to over $250,000 for complex hazardous waste combustion testing.

The commission anticipates that individuals and businesses that decide to apply for regulatory flexibility orders will take these costs into consideration; therefore, the increased testing costs are not anticipated to exceed the actual economic benefits to be gained from receiving authority to operate a facility under a regulatory flexibility order. Since the program was implemented in 1997, the commission has received seven applications for regulatory flexibility, six of which were submitted by large businesses. The annual number of regulatory flexibility order applications submitted to the commission are not anticipated to increase significantly due to implementation of the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications to small or micro-businesses, which may be significant, that voluntarily choose to apply for a regulatory flexibility order. This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which requires applicants seeking regulatory flexibility orders after September 1, 2001 to provide documented evidence which demonstrates that the alternative control measure would

provide greater environmental protection compared to existing commission requirements. The commission currently requires an applicant to provide a narrative description of the alternative control measure, and a demonstration that the proposal would provide environmental protection equivalent to existing requirements.

All small and micro-businesses that operate equipment required to comply with pollution standards under the commission's air, water, or waste permit programs could apply for regulatory flexibility orders. The only exception would be low-level radioactive waste storage, handling, or disposal facilities, which would not be allowed to seek regulatory flexibility under this chapter.

The commission anticipates the only potential additional costs to applicants applying for voluntary regulatory flexibility orders will be costs associated with environmental and engineering testing. Although testing is not a specific requirement, the commission anticipates applicants will have to perform some type of testing beyond what is currently required in order to provide the commission with sufficient evidence that the proposals will exceed existing commission requirements. It is not known how many applicants conducted environmental and engineering testing in the past. The commission estimates there will be a wide range in testing costs, depending on the complexity and scope of the proposals. Testing costs are estimated to range from $100 for simple water analysis testing to over $250,000 for complex hazardous waste combustion testing.

The commission anticipates that small and micro-businesses that decide to apply for regulatory flexibility orders will take these costs into consideration; therefore, the increased testing costs are not anticipated to exceed the actual economic benefits to be gained from receiving authority to operate a facility under a regulatory flexibility order. Since the program was implemented in 1997, the commission has received seven applications, one of which was from a small business. The annual number of regulatory flexibility order applications submitted to the commission are not anticipated to increase significantly due to implementation of the proposed amendments.

The following is an analysis of the costs per employee for small and micro-businesses that voluntarily elect to apply for a regulatory flexibility order and have to pay approximately $50,000 for testing to support the claims of the application. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would have to pay up to an additional $500 per employee, while a micro-business would have to pay up to an additional $2,500 per employee to comply with the proposed amendments.

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 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. Although the intent of the rulemaking is to protect the environment or reduce risks to human health from environmental exposure, and because it is part of a voluntary program offering flexibility to the regulated community, it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition to not being a major environmental rule, the rulemaking also does not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rules do not exceed a standard set by federal law because there are no relevant or applicable federal standards. The proposed rulemaking does not exceed a requirement of a state law because it is a direct implementation of a specific state law. The proposed rulemaking does not exceed a requirement of a delegation agreement or contract between a state and an agency because there are no corresponding relevant or applicable delegation agreements. Finally, the rulemaking is not adopted solely under the general powers of the agency because it is adopted as part of an implementation of a specific state law codified at TWC, §5.758. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the rules would constitute a takings under Texas Government Code, Chapter 2007. This section of the preamble constitutes the assessment required under §2007.043.

The purpose of this proposed rulemaking is to implement a statutory provision which requires that a request for exemption under Chapter 90 be more protective of the environment than the method or standard that would otherwise apply, and that the petition include documented evidence of the resulting benefits to environmental quality. The commission believes that the proposed amendments would substantially advance this purpose because they require any proposed alternative to be "more protective" instead of "at least as protective," as the method or standard that would otherwise apply, and also require that the application include documented evidence of the benefits to environmental quality. There are no burdens imposed on private real property, and the benefits to society are the added protection of health, welfare, and the environment.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not burden real property, 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. Because this proposed rulemaking implements a statutory mandate to make the regulatory requirements more stringent for obtaining a regulatory flexibility order, there is no alternative action that could accomplish this specific purpose. The commission invites public comment on this takings assessment.

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 Chapter 505, §505.11(b)(2) relating to Actions and Rules Subject to the Texas Coastal Management Program, since this rulemaking affects provisions for all types of permits issued by the commission. 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

determined that the proposed rules are in accordance with 31 TAC §505.22, and 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 policies of the CMP in 31 TAC §501.14 implement these goals.

The specific CMP goals applicable to these proposed rules require that rules governing permits shall require systems that are permitted by the commission to be located, designed, operated, inspected, and maintained 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 require that flexibility can only be provided when an applicant clearly demonstrates that the variance requested is more protective than the requirements of a rule or law that would otherwise apply to the system. There are several policies in §501.14 that govern permits conditions for which regulatory flexibility could be sought from the commission. However, since the proposed amendments require that applicants show greater protectiveness in any application submitted, the amendments are consistent with the CMP policies.

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 in Austin on May 20, 2002 at 10:00 a.m., in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments 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 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 2001-073-090-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239- 4580.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND ELIGIBILITY

30 TAC §90.1

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under TWC, §5.758, which requires the commission to establish the procedure to obtain a regulatory flexibility exemption.

The proposed amendment implements TWC, §5.758.

§90.1. Purpose.

The purpose of this chapter is to implement the commission's authority under Texas Water Code, §5.758, to provide regulatory flexibility to an applicant who proposes an alternative method or alternative standard to control or abate pollution [~~Texas Water Code (TWC), §5.123, Regulatory Flexibility; §5.127, Environmental Management Systems; and §5.131, Environmental Management Systems~~].

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202310
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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SUBCHAPTER B. GENERAL PROVISIONS

30 TAC §90.10

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under TWC, §5.758, which requires the commission to establish the procedure to obtain a regulatory flexibility exemption.

The proposed amendment implements TWC, §5.758.

§90.10. Application for a Regulatory Flexibility Order.

(a) (No change.)

(b) The application must, at a minimum, include:

(1) (No change.)

(2) a detailed explanation, including a demonstration as appropriate, that the proposed alternative is:

(A) more [~~at least as~~] protective of the environment and the public health than [~~as~~] the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(B) (No change.)

(3) documented evidence of the benefits to environmental quality that will result from the proposal;

(4) [~~(3)~~] an implementation schedule which includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the RFO;

(5) [~~(4)~~] an identification, if applicable, of any proposed transfers of pollutants between media;

(6) [~~(5)~~] a description of efforts made or proposed to involve the local community and to achieve local community support;

(7) [~~(6)~~] an application fee of $250; and

(8) [~~(7)~~] any other information requested from the applicant by the executive director during the application review period.

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

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202311
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Natural Resource Commission (agency or commission) proposes an amendment to §101.1 and the repeal of §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17. The commission also proposes new §101.201 in new Division 1, *Emissions Events*; new §101.211 in new Division 2*, Maintenance, Startup, and Shutdown Activities*; §§101.221 - 101.224 in new Division 3, *Operational Requirements, Demonstrations, and Excessive Emissions Events*; and new §§101.231 - 101.233 in new Division 4, *Variances*. The amendment and repeals are being proposed in Subchapter A, *General Rules*, and the new sections are being proposed in new Subchapter F, *Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities*. The commission proposes the amendment, repeals, and new sections as revisions to the state implementation plan (SIP) which will be submitted to the United States Environmental Protection Agency (EPA). This rulemaking action is being proposed to incorporate the statutory requirements of House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001, into the commission rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th Legislative Session, the legislature adopted HB 2912. The bill became effective on September 1, 2001. One change resulting from HB 2912 was an amendment to Texas Health and Safety Code (THSC), Subchapter B, Chapter 382, which is the Texas Clean Air Act (TCAA), by adding new §382.0215 and §382.0216. Section 382.0215, Assessment of Emissions Due to Emissions Events, addresses the assessment of emissions due to emissions events. A new term, *emissions event*, was introduced and defined to mean an upset or unscheduled maintenance, startup, or shutdown activity resulting in the unauthorized emission of air contaminants from an emissions point. Section 382.0215 also establishes record-keeping and reporting requirements for sources which had an emissions event that resulted in emissions of a *reportable quantity* (RQ) or greater; establishes reporting requirements for certain boilers and combustion turbines which burn certain fuels and have continuous emission monitoring systems (CEMS); and mandated that the agency centrally track all emissions events. Section 382.0215 also requires the agency to develop the capacity for electronic reporting by January 1, 2003 and to place the information into a centralized database accessible to the public. Furthermore, §382.0215 requires the agency to annually assess the information received concerning emissions events, including the actions taken by the agency in response to the emissions events, and report this information to the legislature.

The THSC, §382.0216, *Regulation of Emissions Events*, requires the commission to establish criteria to determine when emissions events are considered excessive. Section 382.0216 also requires that the following six criteria be considered when determining if an emissions event was excessive: 1) the frequency of the facility's emissions events; 2) the causes of the emissions events; 3) the quantity and impact on human health or the environment of the emissions events; 4) the duration of the emissions events; 5) the percentage of the facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities. Under the requirements of §382.0216, once the agency determines that a facility has had excessive emissions events, the commission must require the owner or operator of a facility to take corrective action to reduce these types of emissions. The owner or operator of the facility must then either file a corrective action plan (CAP) or file a letter of intent to obtain an authorization for the emissions. The owner or operator of the facility may only file a letter of intent if the emissions are sufficiently frequent, quantifiable, and predictable. Furthermore, §382.0216 provides action dates for both the commission and affected facilities for the submittal and approval of the CAPs and required authorizations. Finally, §382.0216 establishes that the burden of proof is on the owner or operator of the facility and that the commission must consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement when reviewing an entity's compliance history.

Based on the legislative changes in HB 2912, concerning assessment and regulation of emissions events, the commission is proposing the revision of its current upset, maintenance, startup, and shutdown (U/M) rules (i.e., amending current rules and providing new rules) to reflect the requirements of HB 2912. The statutory notes of HB 2912, §18.14 state: "The purpose of Sections 382.0215 and 382.0216, Health and Safety Code, as added by this Act, is to add new or more stringent requirements regarding upsets, startups, shutdowns, and maintenance. Those sections may not be construed as limiting the existing authority of the Texas Natural Resource Conservation Commission under Chapter 382, Health and Safety Code, to require the reporting or the permitting of the emission of air contaminants or to bring enforcement action for a violation of Chapter 382." Therefore, the requirements provided in HB 2912 are being proposed as additions to, not the replacement of, current U/M rules.

SECTION BY SECTION DISCUSSION

The primary goal of this proposed rulemaking is to incorporate the statutory requirements of HB 2912. However, because some sections of Chapter 101 are being opened for revisions, the commission is taking the opportunity to revise the general format of Chapter 101. Currently, Chapter 101 is divided into Subchapter A, *General Rules*, and Subchapter H, *Emissions*

Banking and Trading. Subchapter A contains §§101.1 - 101.30 which pertain to a wide variety of topics, whereas the rules in Subchapter H pertain only to emissions banking and trading. The commission intends that as rules in Subchapter A are amended, the different sections (or rules) will be moved to more topically specific subchapters, except for the definitions in §101.1, which will remain in Subchapter A. In this rulemaking, the commission is proposing to repeal §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17, and move the rule language contained within these sections into a new Subchapter F. The rule language contained in §101.6, *Upset Reporting and Recordkeeping Requirements*, will be moved to §101.201, with the title being changed to *Emissions Event Reporting and Recordkeeping Requirements*. Rule language found in §101.7, *Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements*, will be moved to §101.211, with the title being changed to *Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements*. Rule language found in §101.11, *Demonstrations*, will be moved to §101.221 and §101.222 with revised section titles of *Operational Requirements* and *Demonstrations* respectively. Revisions are being proposed to the current language in §§101.201, 101.211, 101.221, and 101.222 which will be discussed later in this section of the preamble. A new §101.223, *Excessive Emissions Events*, will also be discussed later in this section of the preamble. The rule language found in §101.12, *Temporary Exemptions During Drought Conditions*; §101.15, *Petition for Variance*; §101.16, *Effect of Acceptance of Variance or Permit*; and §101.17, *Transfers*, will be moved to §§101.224, 101.231, 101.232, and 101.233 respectively, and the new sections will retain the original titles. The changes being made to language of these sections are purely administrative, and will also be discussed later in this section of the preamble.

Section 101.1. Definitions. (Administrative changes)

Due to the addition of new terms, the numbering of the terms defined in this section will be revised. Furthermore, there are numerous administrative corrections being made to definitions which are not directly affected by HB 2912. These changes are being proposed so that the rule language will conform to commission and *Texas Register* formatting and style standards. Generally, no change in the meaning of these definitions is intended by this rulemaking, except where updates are based on changed facts. These definitions are: fuel oil; maintenance area; and nonattainment area (lead). The proposed administrative definition changes are as follows. The acronym VOC is proposed to be deleted from the definition for *carbon adsorber* because it is not used again in the definition. The phrase "(See incinerator)" is proposed to be deleted from the definition for *commercial incinerator* for formatting and style purposes. The acronym VOC is proposed to be expanded to volatile organic compound and the acronym deleted because it is only used once in the definition for *component*. The words in the definition for *criteria pollutant or standard* are proposed to be lowercased because they are not a proper noun, and the acronym CFR is proposed to be deleted because it is not used again in the definition. The definition for *de minimis* is proposed to be italicized because the term is a Latin term. The acronym ERC is proposed to be deleted from the definition for *emissions reduction credit* because it is not used again in the definition. In the definition for *federal motor vehicle regulation*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted because it is not used again in the definition. In the definition for *federally enforceable*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than once in the definition. In addition, the words "pursuant to" are proposed to be changed to the word "under" to reduce the legalistic style of writing. The phrase "as defined in this section" is proposed to be added to the definition for *flare* because the definition refers to the definition for *vapor combustor*. The definition for *fuel oil* is proposed to be updated by changing the citation for the American Society for Testing and Materials (ASTM) to reflect the current ASTM specifications and to add two new grades of fuel (1 (low sulfur) and 2 (low sulfur)) as listed in the current specifications. In the definition for *gasoline* the words "vapor pressure" in the phrase "Reid Vapor Pressure" are proposed to be lowercased because they are not proper nouns, the acronym kPa is proposed to be expanded to kiloPascals, and the acronyms RVP and kPa are proposed to be deleted because they are only used once in the definition. In the definition for *high-volume low-pressure (HVLP) spray guns*, the acronym HVLP is proposed to be deleted because it is only used once in the definition. In the definition for *leak*, the acronym VOC is proposed to be expanded to volatile organic compound and the acronyms VOC and ppmv are proposed to be deleted because they are only used once in the definition. In the definition for *liquid fuel*, the acronym Btu is proposed to be expanded to British thermal unit and the acronym deleted because it is only used once in the definition. A new maintenance area is proposed to be added to the definition for *maintenance area* which is the Collin County lead maintenance area. In the definition for *maintenance plan*, the word "Plan" is lowercased because it is not a proper noun, the acronym SIP is proposed to be expanded to state implementation plan, and the acronym SIP deleted because it is only used once in the definition. In the definition for *Metropolitan Planning Organization (MPO)*, the acronym MPO is proposed to be deleted because it is only used once, and the acronym USC is expanded to United States Code. The acronym MERC is proposed to be deleted from the definition *mobile emissions reduction credit (MERC)* because it is only used once in the definition. The acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted from the definition for *municipal solid waste landfill* because it is only used once in the definition. The words in the definition for *national ambient air quality standard* are proposed to be lowercased because they are not proper nouns, and the acronyms NAAQS, CO, Pb, NO_2, O_3, PM_{10}, $PM_{2.5}$, and SO_2 are proposed to be deleted because they are only used once. In the definition for *nonattainment area*, the words "national ambient air quality standard" and the word "dioxide" in two places are proposed to be lowercased because they are not proper nouns. In addition, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted; the acronym FR is proposed to be added to the term *Federal Register* because it is used more than once; and the acronyms ELP, NO_2, HGA, BPA, DFW, and SO_2 are proposed to be deleted because they are used only once. Finally, in the definition for *nonattainment area*, the Collin County lead nonattainment area text is proposed to be deleted and the text "No designated nonattainment areas" is proposed to be added to subparagraph (C) because Collin County has been officially redesignated as a lead maintenance area. In the definition for *particulate matter emissions*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than one time; and the acronym SIP is proposed to be expanded to state implementation plan and the acronym deleted because it is only used once. In the definition for PM_{10}, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than once, and the number

"10" is proposed to be changed to the word "ten" to conform with Texas Register style. In the definition for *PM_{10} emissions*, the acronym CFR is proposed to be expanded to Code of Federal Regulations, the acronym SIP is proposed to be expanded to state implementation plan, and both acronyms are proposed to be deleted because they are only used once in the definition. In the definition for *polychlorinated biphenyl compound (PCB)*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronyms PCB and CFR are proposed to be deleted because they are only used once in the definition. In the definition for *reasonable further progress (RFP)*, the acronym SIP is proposed to be expanded to state implementation plan, and the acronyms RFP and SIP are proposed to be deleted because they are only used once in the definition. The acronym USC is proposed to be expanded to United States Code and the acronym deleted from the definition for *solid waste* because it is only used once. The acronym kPa is proposed to be expanded to kiloPascal and the acronym deleted from the definition for *standard conditions* because it is used only once in the definition. In the definition for *submerged fill pipe*, the acronym cm is proposed to be expanded to centimeters because it is only used once in the definition. In the definitions for *sulfuric acid mist/sulfuric acid* and *total suspended particulate*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted because it is used only once in each definition. In the definition for *true vapor pressure*, the acronyms psia and VOC are proposed to be expanded to pounds per square inch absolute and volatile organic compound respectively, and the acronyms deleted because they are only used once in the definition. In the definition for *vapor combustor*, the acronym VOC is proposed to be expanded to volatile organic compound and the acronym deleted because it is only used once in the definition. Finally, in the definition for *VOC water separator*, the acronym is proposed to be expanded to *volatile organic compound (VOC)* because it is used more than once in the definition.

Section 101.1. Definitions. (HB 2912 changes)

The commission is proposing to define a new term, *authorized emissions*, which are emissions of one or more air contaminants that the commission has granted either by a permit, rule, or commission order to be released into the atmosphere, or are emissions which meet the requirements of THSC, §382.0518(g). Section 382.0518(g) applies to a grandfathered source. The new definition would also state that for purposes of Subchapter F of this chapter, emissions of carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen are authorized emissions. The commission proposes to move the exempted compounds that are currently listed in the definition of the term *unauthorized emissions* into the definition of the term *authorized emissions*. This move is necessary to add clarity to the rule, in that while emissions of the compounds in question are air contaminants, the commission has determined that emissions of these compounds should be authorized during an emissions event or a scheduled maintenance, startup, or shutdown activity. The addition of this definition helps to clarify that any emissions not meeting this definition are considered unauthorized emissions.

The commission is proposing to define a new term *emissions event* to incorporate the change in the statute. The THSC, §382.0215 adds the term *emissions event*, defined as "an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions or air contaminants from an emissions point." The commission reviewed its current definition of *upset*, and proposes to replace it with the new term *emissions event* in §101.201 and §101.222.

The commission proposes to revise the term *non-reportable upset* to the more correct term *non-reportable emissions event* to be consistent with the statutory language of HB 2912.

The commission proposes to revise the RQ for ethylene, butenes, and propylene from 5,000 pounds to 100 pounds. These three compounds are not listed in the EPA reportable quantity lists found in 40 CFR Part 302, Table 302.4, or 40 CFR Part 355, Appendix A. The commission also proposes to add to acetaldehyde and toluene, each with an RQ of 100 pounds, to the list of compounds in §101.1(85)(A)(i)(III). The lower RQ recognizes the important role these compounds play in the formation of ozone, and the need for the commission to collect more detailed information on the periodic releases of these compounds in its efforts to attain the ozone standard. The proposal reflects the default RQ of 100 pounds found in proposed §101.1(85)(A)(ii) for any compounds not specifically listed. The commission invites comment on the appropriate levels for the ethylene, butenes, acetaldehyde, toluene, and propylene RQs and the geographical location of these RQs to allow the commission to collect sufficient and meaningful data related to periodic releases. The acronym CFR is proposed to be expanded to Code of Federal Regulations.

To be consistent with the statutory language of HB 2912, the commission is proposing to revise the term *reportable upset* to the more correct term *reportable emissions event*. In addition, because the definition of the term *unauthorized emission* already addresses the fact that the emissions of air contaminants are being released into the atmosphere, the commission proposes to delete the redundant language "of air contaminants" from this definition.

The commission is proposing to define the new term *scheduled maintenance, startup, or shutdown activity*. As previously stated, HB 2912 provided new terms when addressing emissions events. The THSC, §382.0215, refers to unscheduled maintenance, startup, or shutdown activity; therefore, to be consistent with the new statutory language, the commission proposes to define what is considered to be a scheduled maintenance, startup, or shutdown activity.

The commission is proposing to revise the definition of the term *unauthorized emission* to reflect the fact that unauthorized emissions are any emissions that have not been authorized by the commission. As discussed previously, the term *authorized emission* is being proposed to mean emissions of one or more air contaminants that the commission has granted either by a permit, rule, or order of the commission to be released into the atmosphere, or are emissions which meet the requirements of THSC, §382.0518(g).

The commission does not currently have a definition for the term *unscheduled maintenance, startup, or shutdown activity*. The language of HB 2912 defines *unscheduled maintenance, startup, or shutdown activity* by defining what it is not considered to be. The commission proposes two new definitions to incorporate the additional statutory language. As discussed previously, the commission proposes to define *scheduled maintenance, startup, shutdown activity*, and then also define *unscheduled maintenance, startup, or shutdown activity* as a maintenance, startup, or shutdown activity that does not meet the first definition. The commission is proposing to define the new term, *scheduled maintenance, startup, or shutdown*

activity, using the language in the statute; and to define the term, *unscheduled maintenance, startup, or shutdown activity* as simply all other maintenance, startup, or shutdown activities which are not scheduled maintenance, startup, or shutdown activities. The phrase "shall not be considered unscheduled only if" in THSC, §382.0215(a), indicates an intent that all activities be considered unscheduled unless an owner or operator satisfies the requirements for an activity to be scheduled.

The commission is proposing to revise the definition of the term *upset* by adding the clarifying word *event* to the term. Furthermore, to minimize potential confusion with the *upset event* definition, the word "unscheduled" is being replaced with the phrase "unplanned or unanticipated." This is being done because the word "unscheduled" is being used in the new definition *unscheduled maintenance, startup, or shutdown activity*. Finally the commission proposes to delete the redundant phrase "emission of air contaminants."

Section 101.6. Upset Reporting and Recordkeeping Requirements.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.6, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.201.

Section 101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.7, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.211.

Section 101.11. Demonstrations.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.11, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.221 and §101.222.

Section 101.12. Temporary Exemptions During Drought Conditions.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.224. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.15. Petition for Variance.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.231. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.16. Effects of Acceptance of Variance or Permit.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.232. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.17. Transfers.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.233. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.201. Emissions Event Reporting and Recordkeeping Requirements.

In an effort to be consistent with HB 2912, codified in THSC, §382.0215, concerning emissions events, the commission is proposing to replace the term *upset* with the newly defined term *emissions event*. Because of statutory changes in HB 2912, the notification requirements in proposed new §101.201(a)(2) and (3) (old §101.6(a)(2) and (3)), and the reporting requirements in proposed new §101.201(b) (old §101.6(b)), are being revised to require additional information and to provide more detailed information when it is necessary to report an emissions event. The name of the owner or operator of the facility experiencing an emissions event, along with the facility's air account number is now required. When the agency changes to a Central Registry, the air account number will become a secondary identifier and the "regulated entity" number will become the primary identifier. Therefore, a reference to an air account number includes both the regulated entity number as well as the air account number. The owner or operator of a facility experiencing an emissions event must also provide the location of the emissions event. When reporting the processes and equipment involved in the emissions event, the notification should include the authorization for the emissions (i.e., a permit number, permit by rule, rule citation, etc.) and some type of source identification. The source identification must include the common name for the equipment involved and the most precise agency recognized identifier. This identifier could include emission point numbers and facility identification numbers established for emissions inventories or preconstruction authorization requirements, or the identifier could be emission unit numbers for sources subject to the Federal Operating Permits Program. These same new recordkeeping and reporting requirements are being proposed for the rules concerning scheduled maintenance, startup, and shutdown activities, in §101.211(a)(1) and (2), and (b) (old §101.7(b)(1) and (2), and (c). When reporting and recording the date and time of the emissions event, the date and time recorded should be when the emissions event was discovered, not when it is believed that the emissions event started.

In the notification requirements of §101.201(a)(2) and (3) (old §101.6(a)(2) and (3)), and the reporting requirements in §101.201(b) (old §101.6(b)), the commission is proposing a grammatical correction concerning the reporting of the compound descriptive type of the compounds release. The term *exceed* is proposed to be replaced with a more correct phrase *have equaled or exceeded*. The commission is also proposing to clarify the language that when reporting the estimated quantities of the compounds released, the reported numbers should be the total estimated quantities that include both the authorized emissions limit and the total amount of emissions emitted. The commission proposes to remove the exception for reporting opacity only in §101.201(a)(2)(I) and in §101.201(b)(9) for sources other than boilers or combustion turbines referenced in the definition of RQ. Because opacity is considered to be the degree to which emissions reduce the transmission of light and obscure the view of an object in the background, it is simply an indicator and is not the quantity of the air contaminant being emitted, as is required by HB 2912, codified in THSC, §382.0215(b)(3)(E). These same corrections and clarifications are being proposed in the new §101.211(a)(1) and (2), and (b). The agency notification forms for emissions events and scheduled maintenance, startup, and shutdown

activities will also be updated to reflect these requirements. The commission is also proposing a new reporting requirement to provide the basis used to determine the quantity of emissions, including the method of calculation (e.g., the emission factors obtained from the EPA emissions factor document, AP-42). Finally, new §382.0216(b)(3)(H), added by HB 2912, requires that the owner or operator provide any additional information necessary to evaluate the emissions event against the criteria listed in the proposed new §101.222(a). This final requirement is optional for the initial notification requirements of proposed §101.201(a)(2) and (3). However, for proposed §101.201(b), concerning final recordkeeping of all reportable and non-reportable emissions events, this requirement is not optional, and this information must also be submitted when complying with proposed §101.201(c) for the final record.

The commission is proposing a revision to the old §101.6(a)(4) language (new §101.201(a)(4)) by deleting the term *report* and replacing it with the term *provide*. This proposed change is for clarification only and does not impose any new requirements. The change in terminology is necessary to more clearly state that the source must provide additional information upon request of the executive director.

The commission is proposing to delete the exemption language that was contained in the old §101.6(a)(5) because HB 2912 does not allow this exemption. Therefore, proposed new §101.201 will not allow a facility to avoid reporting under these air rules even if the facility reported its spills and discharges as required under 30 TAC §§327.1 - 327.5 and 327.31. Furthermore, THSC, §382.0215, requires that all emissions events be recorded and reported as necessary. Because the statute no longer allows an exemption from double reporting, all unauthorized emissions of an air contaminant must be recorded and reported in accordance with the requirements of these sections.

The commission is proposing to clarify §101.201(b) (old §101.6(b)), to specify that an owner or operator of a facility must create a final record of all reportable and non-reportable emissions events. This change reflects the commission's existing practice and is consistent with guidance that staff has provided to members of the regulated community.

Proposed new §101.201(c) and (e) incorporates the language in old §101.6(c) and (e), respectively, with minor changes to reflect the new terminology in HB 2912.

The commission is proposing two revisions to the language being proposed in §101.201(d) and §101.211(d) (old §101.6(d) and §101.7(e)). First, the language concerning data return is being revised to make it clear that a CEMS must have a data return such that the CEMS completes at least one operating cycle in each successive 15-minute interval. An operating cycle includes sampling, analyzing, and recording of the data. Second, to implement a provision in HB 2912, THSC, §382.0215(c), the commission proposes to require an owner or operator of a combustion turbine or boiler referenced in the definition of RQ that is equipped with a CEMS, and is required to submit an excess emissions report for other state or federal regulations, to include all of the recordkeeping requirements given under §101.201(b) in the excess emissions report.

The commission is proposing new §101.201(f) to implement the requirement of THSC, §382.0216(k) that on and after January 1, 2003, the notifications and final reports required under that section must be submitted electronically to the commission. The commission is currently developing a method by which this data will be received and will provide updates as the 2003 deadline approaches. Until January 1, 2003, businesses may provide notifications and reports by any viable means, which meet the time frames required in the rules. Consistent with the statutory language in THSC, §382.0215(f), the proposed rule includes an exemption from electronic reporting for businesses which meet the small business definition in THSC, §382.0365(g)(2). While exempt from electronic reporting, a small business will still be required to provide notifications and final reports in accordance with the requirements of the rules. The commission invites comment and specific suggestions for an alternative reporting scheme to be used in times of technical difficulty of the electronic reporting system once it is established.

The commission proposes new §101.201(g) to implement THSC, §382.0216(i), which requires the commission to initiate enforcement actions against owners and operators who fail to report an emissions event, for such failure to report, and for the underlying emissions event itself. New §101.201(g) would also include the statutory language in new THSC, §382.0216(i), that this requirement to initiate enforcement does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report. Incomplete, inaccurate, or untimely reports are not sanctioned by this language and continue to be violations of §101.201(a)(2) and (3), and (b) (old §101.6(a)(2) and (3), and (b) respectively), and the commission may initiate enforcement for such violations. The commission expects to follow its enforcement initiation criteria for violations of §101.201(a)(2) and (3) where incomplete, inaccurate, or untimely reports are submitted.

Section 101.211. Scheduled Maintenance, Startup, and Shutdown Reporting, and Recordkeeping Requirements.

In an effort to improve readability and to be consistent with the statutory requirements of HB 2912, the commission proposes to replace the phrase "maintenance, startup, or shutdown" with the newly defined term *scheduled maintenance, startup, or shutdown activity*, found in THSC, §382.0215(a). The commission is proposing this change in several places in

101.211.The change reflects the intentional distinction between scheduled and unscheduled maintenance, startup, or shutdown activities.

In addition to the changes to §101.211 discussed earlier in this preamble, the commission proposes to change the language in new §101.211(a) (old §101.7(b)) to clarify that any event that meets the definition of an unscheduled maintenance, startup, or shutdown activity is considered to be an emissions event, and therefore, is subject to the reporting requirements of §101.201 and the exemption criteria specified in §101.222(a). This clarification is consistent with the requirements of HB 2912 and would clarify the commission's existing practice since the rule was amended in 1997.

The commission proposes changes in the language of §101.211(b) to clarify that the date and time of the maintenance, startup, or shutdown in the notification of an activity, is considered to be the *expected* date and time. For the final reporting and recordkeeping purposes, the event date and time should be the *exact or actual* event date and time. Furthermore, the commission is proposing that the final records must be completed as soon as practicable, but not later than two weeks after the end of the activity, not the start of the activity. For

shutdowns, the end of the activity would be the cessation of operation of a facility for any purpose.

The commission proposes new §101.211(c) to clarify that, if for any reason, the information provided in the initial notification is different than what is recorded as the final record, the owner or operator must submit this revised information within two weeks after the end of the activity. The owner or operator of a source must submit a final report for any scheduled maintenance, startup, or shutdown activity where an initial notification was provided even if the unauthorized emissions did not actually exceed an RQ. This final report is necessary to track information collected about maintenance, startup, and shutdown activities in the commission's centralized database, and to provide closure to initial reports of such activities.

Section 101.221. Operation Requirements.

The commission proposes a new §101.221(a), which states, "No person shall cause, suffer, allow, or permit unauthorized emissions." The THSC, §382.0215(a) provides a definition for the new term *emissions event* which includes the term *unauthorized emissions*. New §101.221(a) is necessary to complete the connection between the concepts in the statute and the commission's existing rules. Simply put, it is a violation to have unauthorized emissions unless an owner or operator can demonstrate that the emissions should be exempt. This change reflects existing practice and is consistent with guidance that agency staff has provided to members of the regulated community.

As previously stated, Chapter 101 is being reformatted, thus, the commission is moving the old §101.7(a) to §101.221(b). The proposed new §101.221 rule primarily concerns operational requirements of sources. Because the old §101.7(a) related to the operation of pollution emission capture equipment and abatement equipment, the most logical place for this rule language is in proposed new §101.221.

The commission proposes to move, without any changes, the operational requirements found in old §101.11(c) concerning smoke generators and other devices used to train inspectors in the evaluation of visible emissions into §101.221(c) and to move the operational requirements currently in §101.11(d) concerning equipment, machines, devices, flues, and or contrivances to be used at a domestic residence into §101.221(d). Similarly, the commission proposes to move the existing rule text in §101.11(e) concerning sources which cannot be controlled or reduced due to a lack of technological knowledge into §101.221(e). The existing rule language in §101.11(f) relating to the burden of proof to demonstrate that the exemption criteria have been met is on the owner or operator of the source, is being proposed in §101.221(f), with minor changes. The minor changes concern revision of rule citations and replacement of the term *upsets* with the new term *emissions events*. The commission proposes to move the existing rule language found in §101.7(g), which relates to the commission's power to require corrective action as necessary to minimize emissions, into §101.221(g), without revisions.

Section 101.222. Demonstrations.

The commission proposes to move the existing rule language from §101.11(a) and (b) to new §101.222(a) and (b) respectively. As proposed in other sections of this proposal, the commission proposes in this section to replace the terms *upset* and *maintenance, startup, or shutdown* with the terms *emissions events* and *scheduled maintenance, startup, or shutdown activity*, respectively in order to be consistent with the statutory language of HB 2912.

The THSC, §382.0216(f), states that "The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1) - (6)." This affirmative defense largely parallels existing commission practice of evaluating factors listed in existing §101.11(a). In reviewing the criteria provided in HB 2912, codified in THSC, §382.0216(b)(1) - (6), the commission determined that most of those factors were already included in the rule and proposes in this rulemaking to add the new statutory factors to the existing rule language being proposed in §101.222.

The first criterion from HB 2912 concerns the frequency of the facility's emissions event. The commission proposes to revise old §101.11(a)(8) (new §101.222(a)(8)) to incorporate this factor. The rule would now read, "the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance." The second new factor relates to the cause of the emissions event, which is included in the old §101.11(a)(1), proposed new §101.222(a)(1). The third new factor relates to the quantity and impact on human health or the environment of the emissions event. The commission believes that this concept is covered under the old §101.11(a)(9), new §101.222(a)(10), in the requirement that the event does not cause or contribute to a condition of air pollution. The fourth new factor relates to duration of the emissions event, which is incorporated in existing §101.11(a)(5), new §101.222(a)(5). The fifth factor relates to the percentage of a facility's total annual operating hours during which unauthorized emissions occurred. The commission proposes to add new §101.222(a)(9) to address this factor. In this regard, the commission will compare the number of hours when emissions events have occurred to the total number of operating hours to determine if the percentage of unauthorized emissions is unreasonably high. As with the commission's review of each of the factors, this review will be performed on a case-by-case basis. The sixth new factor relates to the need for the startup, shutdown, and maintenance activities. The commission is proposing to revise the old §101.11(a)(3) language in new §101.222(a)(3) to incorporate this factor. The new language is proposed to read, "the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events."

The commission proposes to move the criterion for scheduled maintenance, startup, or shutdown activities in §101.11(b) to new §101.222(b), with only one minor change. In an effort to remove redundant rule language, the phrase "air emissions limitations established in permits, rules, and orders of the commission, or as authorized by TCAA, §382.0518(g)" is being replaced with "authorized emission limitation."

Section 101.223. Excessive Emissions Events.

The commission proposes to add new §101.223 to establish criteria to determine when a facility has had excessive emissions events and to identify requirements for source owners and operators when the executive director determines a facility has had

excessive emissions events. One emissions event may constitute an excessive emission event. New §101.223 would also establish the framework in which the commission will determine that a site has had chronic excessive emissions events.

The THSC, §382.0216(b) requires the commission to establish criteria to determine when emissions events are considered excessive. The criteria must include: 1) the frequency of the facility's emissions events; 2) the cause of the emissions event; 3) the quantity and impact on human health or the environment of the emissions event; 4) the duration of the emissions event; 5) the percentage of a facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities.

The commission is proposing these criteria in §101.223(a) as the criteria the executive director will use to evaluate when emissions events are considered excessive. Just as the commission or executive director determines if a single emissions event meets the exemption criteria provided in §101.222 on a case-by-case basis, the commission or executive director will conduct evaluations to determine if a facility has excessive emissions events on a case-by-case basis. Case-by-case determinations are necessary because the rules in Chapter 101 apply statewide to all types of facilities. The commission does not have the resources to develop case-specific criteria limits for each of the different types of facilities in the state which have the potential to emit air contaminants. In addition, case-by-case reviews allow for a more thorough evaluation of all relevant information about an emissions event.

The commission proposes that when the executive director determines that a facility has excessive emissions events, the executive director will provide written notification to the owner or operator. The owner or operator must then take action to reduce emissions, either in the form of a CAP; or if the emissions are sufficiently frequent, quantifiable, and predictable, the owner or operator may file a letter of intent to obtain authorization from the commission for the emissions.

The commission is proposing in §101.223(b)(1) minimum requirements for a CAP. At a minimum the CAP must: identify the cause or causes of each emissions event in question, including all contributing factors that led to each emissions event; specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future; identify operational changes the owner or operator will take to prevent or minimize similar emissions events; and specify time frames within which the owner or operator will implement the components of the CAP. The time frame, or implementation schedule, of the CAP will be enforceable by the commission. To obtain closure of these actions, the commission is proposing a requirement in §101.223(b)(2) that the owner or operator must obtain commission approval within 120 days of initial filing of the CAP.

The THSC, §382.0216(d) requires specific dates concerning the review and approval of CAPs. If the commission does not disapprove a plan within 45 days, the plan is deemed approved. Within this 45-day period, if the executive director provides written notification of disapproval, the owner or operator will have 15 days to respond, unless another deadline is specified. The owner or operator may request a written approval of the CAP, in which case the commission must take a final written action within 120 days. Finally, if the commission determines that the CAP is inadequate to prevent or minimize emissions and emissions events, the commission may revise the approved CAP. Under THSC, §382.0216(d), the commission must approve all CAPS. An approved CAP under §101.223(b)(2) is not an authorization for unauthorized emissions.

The THSC, §382.0216(c) specifies timelines for the filing of a permit application or obtaining authorization if a permit by rule or standard permit is feasible. The owner or operator will have 15 days to file a letter of intent to obtain authorization for the emissions. If authorization is to be obtained by a permit application, the application must be filed within 120 days after filing the letter of intent. If the permitting option is chosen, the emissions must meet permitting criteria established in 30 TAC Chapter 116. If permitting criteria cannot be met, the owner or operator must file a CAP. For emissions authorizations through a permit by rule or a standard permit, the authorization must be obtained within 120 days after filing the letter of intent. If the commission denies any of these requests for authorization, the owner or operator must file for a CAP within 45 days after receiving notice of the commission denial.

Finally, the commission proposes new §101.223(c) to describe when a site may be considered to have chronic excessive emissions events. When a site has received two or more excessive emissions events determinations from the executive director within a five-year time frame, the executive director may forward those determinations to the commission for issuance of an order finding that the site has chronic excessive emissions events and requiring the owner or operator to take corrective action to reduce emissions events and to submit a CAP. This section would also establish the following criteria for the commission to consider in determining whether a site has chronic excessive emissions events: 1) the size, nature, and complexity of the site's operations; and 2) the frequency of the site's emissions events. The THSC, §382.0216(j) requires the commission to consider chronic excessive emissions events in its review of a person's compliance history.

In addressing the HB 2912 requirements concerning chronic excessive emissions events, the commission is proposing that the determination would be based on a review of the whole site, not just each facility at a site. The rationale for this proposal is to use consistent terminology between the Chapter 101 rules and the compliance history rules in 30 TAC Chapter 60 that the commission has proposed in the April 12, 2002 issue of the *Texas Register*. Under §60.1(c)(4), chronic excessive emissions events at a site are components to be included in a person's compliance history specific to the site which is under review. Because the term *site* is not currently defined in Chapter 101, the commission is proposing to add the same definition of site as in proposed §60.2(a). This will also allow consistency between the two regulations.

The THSC, §382.0216(g), states: "A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a CAP approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure." The commission proposes to add §101.223(d) to incorporate this statutory language.

Section 101.224. Temporary Exemptions During Drought Conditions.

The commission is proposing to move the existing rule language in §101.12 into new §101.224, without changing the intent of the rule. The commission is proposing only two minor revisions to the language. First, the name of the commission's air permitting

division is being revised from Office of Air Quality, New Source Review Division to Office of Permitting, Remediation, and Registration, Air Permits Division. Second, the word "utilize" is replaced with the more grammatically correct word "use."

Section 101.231. Petition for Variance.

The commission is proposing to move the rule language in §101.15 into new §101.231, without changing the intent of the rule. The only proposed revision to the section is to replace "Texas Natural Resource Conservation Commission (TNRCC or commission)" with "commission" to facilitate the commission name change required by HB 2912.

Section 101.232. Effect of Acceptance of Variance or Permit.

The commission is proposing to move the rule language in §101.16 into new §101.232, without changing the intent of the rule. The only revisions being proposed are grammatical and stylistic and include: changing "pursuant to" to "under;" changing "TNRCC" to "commission;" and "Act" to "TCAA."

Section 101.233. Transfers.

The commission proposes to move the existing rule language in §101.17 into new §101.233, without changing the intent of the rule. The only proposed revision to the existing language is to replace the phrase "Texas Natural Resource Conservation Commission (TNRCC or commission)" with the term "commission," to facilitate the commission name change required by HB 2912.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rulemaking is in effect, there will be no significant fiscal implications for the commission due to administration and enforcement of the proposed rules. However, there may be significant fiscal implications to units of state and local government that experience excessive emissions events. An emissions event is defined as any upset event or unscheduled maintenance, startup, or shutdown activity that results from unauthorized emissions from an emissions point. There would be no additional costs to units of state and local government that do not have excessive emissions events.

The proposed rulemaking is intended to make changes to the commission's general air quality rules in order to implement certain provisions of HB 2912. The bill requires the agency to establish criteria to determine when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The criteria to be used, as required by HB 2912, will include the following: the frequency of the facility's emissions events; the cause of the emissions event; the quantity and impact on human health or the environment of the emissions event; the duration of the emissions event; the percentage of a facility's total annual operating hours during which emissions events occur; and the need for startup, shutdown, and maintenance activities. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to units of state and local government due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: new source review (NSR) permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates there are more than 7,000 facilities operating under an air permit, and another 6,000 or more facilities operating via a permit by rule. The commission estimates that approximately 5%, or 350, of the permitted facilities are owned and operated by units of state and local government, and a comparatively small number of facilities operating under a permit by rule are owned and operated by units of state and local government.

The commission anticipates that very few, if any, facilities identified as having excessive emissions events will be units of state and local government. The commission currently records emissions events from approximately 550 air accounts per year, some of which may be units of state and local government. Using the proposed excessive emissions event criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis. For those units of government with facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed amendments will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as $6,000 to $10,000 per ton of emission reduction. If the CAP includes increased monitoring, the commission estimates that the cost to install a monitoring system for a large combustion source could range from $100,000 to $150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between $450 and $75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than $300,000, the fee is $450. If the capital costs of the project are greater than $300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of $75,000.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed rulemaking is in effect, the public benefit anticipated as a result of implementing the proposed rules will be potentially increased environmental protection through the reduction of unauthorized emissions by requiring additional reporting and corrective action measures.

The proposed rulemaking is intended to make changes to the commission's general air quality rules to implement certain provisions of HB 2912. The bill requires the agency to establish criteria for determining when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to individuals and businesses due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: NSR permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates that there are more than 7,000 facilities operating under an air permit, and another 6,000 or more facilities operating via a permit by rule. The commission anticipates that very few facilities will be classified as having excessive emissions events. The commission currently records emissions events from approximately 550 air accounts per year. Using the proposed excessive emissions event criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis. For those facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed rules will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as $6,000 to $10,000 per ton of emission reduction. If the CAP includes increased monitoring, the commission estimates that the cost to install a monitoring system for a large combustion source could range from $100,000 to $150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between $450 and $75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than $300,000, the fee is $450. If the capital costs of the project are greater than $300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of $75,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small or micro- businesses due to implementation of the proposed rulemaking, which is intended to make changes to the commission's general air quality rules in order to implement certain provisions of HB 2912. The bill requires the agency to establish criteria for determining when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to small and micro-businesses due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: NSR permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates there are more than 7,000 facilities operating under an air permit, and another 6,000 or more facilities operating via a permit by rule. Many of these facilities are anticipated to be small and micro- businesses.

The commission anticipates that very few, if any, facilities will be classified as having excessive emissions events. The commission currently records emissions events from approximately 550 air accounts per year. Using the proposed excessive emissions events criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis. For those facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed rules will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as $6,000 to $10,000 per ton of emissions reduction. If the CAP includes increased monitoring, the

commission estimates that the cost to install a monitoring system for a large combustion source could range from $100,000 to $150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between $450 and $75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than $300,000, the fee is $450. If the capital costs of the project are greater than $300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of $75,000.

The following is an analysis of the costs per employee for small and micro-businesses that are required to install additional monitoring systems at a large combustion source to comply with the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business that is required by the commission to install additional monitoring systems would have to pay up to an additional $1,500 per employee to comply with the proposed rules. A micro-business that is required by the commission to install additional monitoring systems would have to pay up to an additional $7,500 per employee to comply with the proposed rules. Because the proposed rulemaking could result in a number of different potential costs for affected small and micro- businesses, this example was chosen because it is one of the most costly likely to affect a small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225 and has determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments would implement certain requirements of HB 2912. Specifically, the amendments require additional reporting for each emissions event; require excess emission reports from certain boilers and combustion turbines to have all required reporting information to satisfy as final reports; establish an affirmative defense to an emissions event, including statutory limitations as to when that defense is unavailable, and clarify that the burden of proof for an affirmative defense is on the person claiming the defense; incorporate statutory requirements for filing a CAP or intent to obtain authorization for emissions, and associated required deadlines; create provisions for required contents of CAPs and commission approval and enforcement of CAPs; establish criteria for determining when emissions events are excessive; and define a process for the executive director to determine when excessive emissions events have occurred and criteria for the commission to consider in determining when an owner or operator has chronic excessive emissions events. In addition, the amendments would revise the definition section, including a change to the RQ for ethylene, butenes, acetaldehyde, toluene, and propylene, and revise the general format of Chapter 101. The amendments, which implement HB 2912, §5.01 and §18.14, add new or more stringent requirements, and do not limit the commission's existing authority requiring reporting or permitting of emissions and authority to bring enforcement action under the THSC and Texas Water Code (TWC). The amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The amendments do not exceed a standard set by federal law or exceed an express requirement of state law. Further, there is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. As discussed in the STATUTORY AUTHORITY section of this preamble, this rulemaking was not developed solely under the general powers of the agency, but is authorized by the provisions cited in that section to implement certain requirements of HB 2912 and modify the reporting requirements for specific air contaminants. Therefore, this rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft RIA determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules. The specific purpose of this rulemaking is to implement certain sections of HB 2912, modify the reportable quantities of ethylene and propylene, and revise the format of Chapter 101, as discussed elsewhere in this preamble. The amendments specifically propose to implement the requirements of TCAA, §382.0215 and §382.0216, regarding the reporting of upset and maintenance emissions. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and

Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 101 contains applicable requirements under 30 TAC Chapter 122, *Federal Operating Permits*; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the permit revision process in Chapter 122, revise their operating permits to include the revised Chapter 101 requirements for each emissions unit at their sites affected by these revisions.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on May 21, 2002, at 10:00 a.m., at the 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. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend a 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 Ms. Lola Brown, 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 2001-075-101-AI. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Troy Dalton of the Enforcement Division at (512) 239-1541 or Alan Henderson of the Policy and Regulations Division at (512) 239-1510.

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The amendment is also proposed under Title 42 United States Code (42 USC), §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq*.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) Authorized emissions--Emissions of one or more air contaminants that are authorized by a permit, rule, or order of the commission or TCAA, §382.0518(g). For purposes of Subchapter F of this chapter, emissions of carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen are authorized emissions.

(5) [~~(4)~~] Background--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) [~~(5)~~] Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(7) [~~(6)~~] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(8) [~~(7)~~] Carbon adsorber--An add-on control device which uses activated carbon to adsorb volatile organic compounds [~~(VOC)~~] from a gas stream.

(9) [~~(8)~~] Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(10) [~~(9)~~] Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(11) [~~(10)~~] Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(12) [~~(11)~~] Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(13) [~~(12)~~] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility which disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(14) [~~(13)~~] Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments. [~~(See incinerator.)~~]

(15) [~~(14)~~] Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(16) [~~(15)~~] Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, which has the potential to leak volatile organic compounds [~~VOCs~~].

(17) [~~(16)~~] Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(18) [~~(17)~~] Construction-demolition waste--Waste resulting from construction or demolition projects.

(19) [~~(18)~~] Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(20) [~~(19)~~] Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(21) [~~(20)~~] Criteria pollutant [~~Pollutant~~] or standard [~~Standard~~]--Any pollutant for which there is a national ambient air quality standard [~~National Ambient Air Quality Standard~~] established under 40 Code of Federal Regulations [~~(CFR)~~] Part 50.

(22) [~~(21)~~] Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(23) [~~(22)~~] *De minimis* [~~De minimis~~] impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.
Figure: 30 TAC §101.1(23)
[~~Figure: 30 TAC §101.1(22)~~]

(24) [~~(23)~~] Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(25) [~~(24)~~] Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(26) Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity that results in unauthorized emissions from an emissions point.

(27) [~~(25)~~] Emissions reduction credit [~~(ERC)~~]--Any stationary source emissions reduction which has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(28) [~~(26)~~] Emissions reduction credit certificate--The certificate issued by the executive director which indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(29) [~~(27)~~] Emissions unit--Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(30) [~~(28)~~] Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compound.

(31) [~~(29)~~] External floating roof--A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(32) [~~(30)~~] Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations [~~CFR~~] Part 85.

(33) [~~(31)~~] Federally enforceable--All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) [~~CFR~~] Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR §52.21 or under regulations approved under [~~pursuant to~~] 40 CFR Part 51, Subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(34) [~~(32)~~] Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and which is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(35) [~~(33)~~] Fuel oil--Any oil meeting the [~~The~~] American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01 [~~D 396-86~~], Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(36) [~~(34)~~] Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(37) [~~(35)~~] Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(38) [~~(36)~~] Gasoline--Any petroleum distillate having a Reid vapor pressure [~~Vapor Pressure (RVP)~~] of four pounds per square inch (27.6 kilopascals [~~kPa~~]) or greater, which is produced for use as a motor fuel, and is commonly called gasoline.

(39) [~~(37)~~] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(40) [~~(38)~~] Hazardous waste management unit--A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(41) [~~(39)~~] Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code (USC), §§6901 et seq., as amended.

(42) [~~(40)~~] Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(43) [~~(41)~~] High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(44) [~~(42)~~] High-volume low-pressure [~~(HVLP)~~] spray guns--Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(45) [~~(43)~~] Incinerator--An enclosed combustion apparatus and attachments which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(46) [~~(44)~~] Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(47) [~~(45)~~] Industrial furnace--Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(48) [~~(46)~~] Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(49) [~~(47)~~] Internal floating cover--A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(50) [~~(48)~~] Leak--A volatile organic compound [~~VOC~~] concentration greater than 10,000 parts per million by volume [~~(ppmv)~~] or the amount specified by applicable rule, whichever is

lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(51) [~~(49)~~] Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units [~~Btu~~] per pound.

(52) [~~(50)~~] Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(53) [~~(51)~~] Maintenance area--A geographic region of the state previously designated nonattainment under the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under FCAA, §175A, as amended. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area (60 FR 12453)--Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421- 55425)--Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(54) [~~(52)~~] Maintenance plan [~~Plan~~]--A revision to the applicable state implementation plan [~~SIP~~], meeting the requirements of FCAA, §175A.

(55) [~~(53)~~] Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(56) [~~(54)~~] Mechanical shoe seal--A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(57) [~~(55)~~] Medical waste--Waste materials identified by the Texas Department of Health as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care related facilities.

(58) [~~(56)~~] Metropolitan Planning Organization [~~(MPO)~~]--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC) [~~USC~~], §134 and 49 USC, §1607.

(59) [~~(57)~~] Mobile emissions reduction credit [~~(MERC)~~]--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E of this title (relating to Low Emission Vehicle Fleet Requirements) or Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and which has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title.

(60) [~~(58)~~] Motor vehicle--A self-propelled [~~self propelled~~] vehicle designed for transporting persons or property on a street or highway.

(61) [~~(59)~~] Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(62) [~~(60)~~] Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(63) [~~(61)~~] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(64) [~~(62)~~] Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations [~~CFR~~] §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous [~~non-hazardous~~] sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(65) [~~(63)~~] National ambient air quality standard [~~Ambient Air Quality Standard (NAAQS)~~]--Those standards established under FCAA, §109, including standards for carbon monoxide [~~(CO)~~], lead [~~(Pb)~~], nitrogen dioxide [~~(NO_2)~~], ozone [~~(O_3)~~], inhalable particulate matter [~~(PM_{10} and $PM_{2.5}$)~~], and sulfur dioxide [~~(SO_2)~~].

(66) [~~(64)~~] Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(67) [~~(65)~~] New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(68) [~~(66)~~] Nonattainment area--A defined region within the state which is designated by EPA as failing to meet the national ambient air quality standard [~~National Ambient Air Quality Standard~~] for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations [~~CFR~~] Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state. [~~:~~]

(A) Carbon monoxide (CO). El Paso [~~(ELP)~~] CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on

the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso [~~(ELP)~~] PM_{10} nonattainment area (56 FR 56694)--Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas. [~~Collin County lead nonattainment area (56 FR 56694) Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1,000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the GNB property line; Southside: Fence line approximately 1,000 feet south of the GNB property line.~~]

(D) Nitrogen dioxide [~~Dioxide (NO$_2$)~~]. No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston [~~(HGA)~~] ozone nonattainment area (56 FR 56694)--Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso [~~(ELP)~~] ozone nonattainment area (56 FR 56694)--Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur [~~(BPA)~~] ozone nonattainment area (61 FR 14496)--Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth [~~(DFW)~~] ozone nonattainment area (63 FR 8128)--Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur dioxide [~~Dioxide (SO$_2$)~~]. No designated nonattainment areas.

(69) [~~(67)~~] Non-reportable emissions event [~~Nonreportable upset~~]--Any emissions event [~~upset~~] that is not a reportable emissions event [~~upset~~] as defined in this section.

(70) [~~(68)~~] Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(71) [~~(69)~~] Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(72) [~~(70)~~] Outdoor burning--Any fire or smoke-producing process which is not conducted in a combustion unit.

(73) [~~(71)~~] Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(74) [~~(72)~~] Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) [~~CFR~~] Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan [~~SIP~~].

(75) [~~(73)~~] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(76) [~~(74)~~] PM_{10}--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten [~~10~~] micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) [~~CFR~~] Part 50, Appendix J and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(77) [~~(75)~~] PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations [~~CFR~~] Part 51, or by a test method specified in an approved state implementation plan [~~SIP~~].

(78) [~~(76)~~] Polychlorinated biphenyl compound [~~(PCB)~~]--A compound subject to 40 Code of Federal Regulations [~~CFR~~] Part 761.

(79) [~~(77)~~] Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(80) [~~(78)~~] Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process which may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(81) [~~(79)~~] Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(82) [~~(80)~~] Reasonable further progress [~~(RFP)~~]--Annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan [~~SIP~~].

(83) [~~(81)~~] Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(84) Reportable emissions event--Any emissions event which, in any 24-hour period, results in an unauthorized emission equal to or in excess of the reportable quantity as defined in this section.

(85) [~~(82)~~] Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) [~~CFR~~] §302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR §355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) butanes (any isomer)--5,000 pounds;

(-b-) butenes (any isomer, except 1,3-butadiene)--100 [~~5,000~~] pounds;

(-c-) ethylene--100 [~~5,000~~] pounds;

(-d-) carbon monoxide--5,000 pounds;

(-e-) pentanes (any isomer)--5,000 pounds;

(-f-) propane--5,000 pounds;

(-g-) propylene--100 [~~5,000~~] pounds;

(-h-) ethanol--5,000 pounds;

(-i-) isopropyl alcohol--5,000 pounds;

(-j-) mineral spirits--5,000 pounds;

(-k-) hexanes (any isomer)--5,000 pounds;

(-l-) octanes (any isomer)--5,000 pounds;

(-m-) decanes (any isomer)--5,000 pounds; [~~or~~]

(-n-) acetaldehyde--100 pounds;

(-o-) toluene--100 pounds; or

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound which equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture which equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding methane and ethane, or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity, an opacity which is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only reportable quantity applicable to boilers or combustion turbines fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight;

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest facility property line:

(i) less than one half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

[~~(83) Reportable upset--Any upset which, in any 24-hour period, results in an unauthorized emission of air contaminants equal to or in excess of the reportable quantity as defined in this section.~~]

(86) [~~(84)~~] Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(87) Scheduled maintenance, startup, or shutdown activity--A maintenance, startup, or shutdown activity that will not and does not result in the emission of at least a reportable quantity of unauthorized emissions and the activity is recorded as required by §101.211 of this title (relating to Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements), or if the maintenance, startup, or shutdown activity results in the emission of at least a reportable quantity of unauthorized emissions and:

(A) the owner or operator of the facility provides prior notice and a final report as required in §101.211 of this title;

(B) the notice or final report includes the information required in §101.211 of this title; or

(C) the actual emissions do not exceed the estimates submitted in the notice.

(88) Site--For the purposes of Subchapter F of this chapter, shall mean all units, facilities, equipment, structures, or regulated sources at one street address or location that are owned or operated by the same person. Site includes any property used in connection with the regulated activity.

(89) [~~(85)~~] Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(90) [~~(86)~~] Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(91) [~~(87)~~] Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 United States Code [~~USC~~], §§6901 et seq.).

(92) [~~(88)~~] Sour crude--A crude oil which will emit a sour gas when in equilibrium at atmospheric pressure.

(93) [~~(89)~~] Sour gas -Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(94) [~~(90)~~] Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(95) [~~(91)~~] Special waste from health care related facilities--A solid waste which if improperly treated or handled may serve to transmit infectious disease(s) and which is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(96) [~~(92)~~] Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals [~~kPa~~]). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(97) [~~(93)~~] Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget.

(98) [~~(94)~~] Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters [~~cm~~]) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(99) [~~(95)~~] Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(100) [~~(96)~~] Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and shall include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations [~~CFR~~] Part 60, Appendix A.

(101) [~~(97)~~] Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(102) [~~(98)~~] Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations [~~CFR~~] Part 50, Appendix B.

(103) [~~(99)~~] Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(104) [~~(100)~~] True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, [~~(psia)~~] of all volatile organic compounds [~~VOCs~~] at the temperature of storage, handling, or processing.

(105) [~~(101)~~] Unauthorized emission--An emission of any air contaminant [~~except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen~~] which is not an authorized emission as defined in this section [~~exceeds any air emission limitation in a permit, rule, or order of the commission or as authorized by TCAA, §382.0518(g)~~].

(106) Unscheduled maintenance, startup, or shutdown activity--Any maintenance, startup, or shutdown activity that is not a scheduled maintenance, startup, or shutdown activity as defined in this section.

(107) [~~(102)~~] Upset event--An unplanned or unanticipated [~~unscheduled~~] occurrence or excursion of a process or operation that results in [~~an~~] unauthorized emissions [~~emission of air contaminants~~].

(108) [~~(103)~~] Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(109) [~~(104)~~] Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds [~~VOCs~~] by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(110) [~~(105)~~] Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(111) [~~(106)~~] Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(112) [~~(107)~~] Visible emissions--Particulate or gaseous matter which can be detected by the human eye. The radiant energy from an open flame shall not be considered a visible emission under this definition.

(113) [~~(108)~~] Volatile organic compound [~~(VOC)~~]--Any compound of carbon or mixture of carbon compounds excluding methane; ethane; 1,1,1-trichloroethane (methyl chloroform); methylene chloride (dichloromethane); perchloroethylene (tetrachloroethylene); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 1,1,1-trifluoroethane

(HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane; 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane; 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; and perfluorocarbon compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(114) [~~(109)~~] Volatile organic compound (VOC) [~~VOC~~] water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

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
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For further information, please call: (512) 239-0348

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30 TAC §§101.6, 101.7, 101.11, 101.12, 101.15 - 101.17

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the commission to issue orders to carry out the purposes of TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; §382.0518(g), concerning Preconstruction Permits, which authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The repeals are also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq*.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.023, 382.025, 382.028, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.6. Upset Reporting and Recordkeeping Requirements.
§101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.
§101.11. Demonstrations.
§101.12. Temporary Exemptions During Drought Conditions.
§101.15. Petition for Variance.
§101.16. Effect of Acceptance of Variance or Permit.
§101.17. Transfers.

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

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SUBCHAPTER F. EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES
DIVISION 1. EMISSIONS EVENTS

30 TAC §101.201

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq*.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events shall apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a facility shall:

(A) determine if the event is a reportable emissions event; and

(B) notify the commission office for the region in which the facility is located, and all appropriate local air pollution control agencies, if the emissions event is reportable.

(2) The notification for reportable emissions events, except for boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in §101.1 of this title (relating to Definitions), shall identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the location of the emissions event;

(D) the cause of the emissions event, if known;

(E) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission- recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the date and time of the discovery of the emissions event;

(G) the duration or expected duration of the emissions event;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the reportable quantity;

(I) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph;

(J) the basis used for determining the quantity of air contaminants emitted;

(K) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title (relating to Demonstrations). For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of subsection (c) of this section, the information in this subparagraph is required.

(3) The notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title shall identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the location of the emissions event;

(D) the cause of the emissions event, if known;

(E) the processes and equipment involved, including emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the date and time of the discovery of the emissions event;

(G) the duration or expected duration of the emissions event;

(H) the estimated opacity;

(I) the authorized opacity limit for the source having the emissions event;

(J) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(K) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title. For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of subsection (c) of this section, the information in this subparagraph is required.

(4) The owner or operator of a facility experiencing an emissions event must provide additional or more detailed information on the emissions event when requested by the executive director or any air pollution control agency with jurisdiction.

(b) The owner or operator of a facility experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a site is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the site. Such records shall identify:

(1) the name of the owner or operator of the facility experiencing an emissions event;

(2) the commission air account number of the facility experiencing an emissions event, if the account number exists;

(3) the location of the emissions event;

(4) the cause of the emissions event;

(5) the processes and equipment involved, including emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(6) the date and time of the discovery of the emissions event;

(7) the duration of the emissions event;

(8) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of reportable quantity;

(9) the estimated total quantities for those compounds or mixtures described in paragraph (8) of this subsection and the authorized emissions limits for the source experiencing the emissions event, except for boilers or combustion turbines referenced in the definition of RQ, which record only the authorized opacity limit and the estimated opacity during the emissions event;

(10) the basis used for determining the quantity of air contaminants emitted;

(11) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(12) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final record of the emissions event.

(d) The owner or operator of a boiler or combustion turbine referenced in the definition of RQ in §101.1 of this title that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting records of reportable and non- reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section. Excess emission reports that may satisfy other state or federal requirements, and which are used to satisfy this subsection must, at a minimum, contain the information required in subsection (b) of this section.

(e) The owner or operator of any facility subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation shall include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

(f) On and after January 1, 2003, notifications required in subsection (a) of this section and final reports required in subsection (c) of this section, shall be submitted electronically to the commission using the electronic forms provided by the commission. Electronic notification and reporting is not required for small businesses which meet the small business definition in TCAA, §382.0365(g)(2). Small businesses shall provide notifications and reporting by any viable means which meet the time frames set out in this section.

(g) In the event the owner or operator of a facility fails to report an emissions event, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions

event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report.

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
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For further information, please call: (512) 239-0348

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DIVISION 2. MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

30 TAC §101.211

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq*.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.211. Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements.

(a) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall notify the commission office for the region in which the facility is located and all appropriate local air pollution control agencies at least ten days prior to any scheduled maintenance, startup, or shutdown activity which is expected to cause an unauthorized emission which equals or exceeds the reportable quantity as defined in §101.1 of this title (relating to Definitions) in any 24- hour period. If notice cannot be given ten days prior to a scheduled maintenance, startup, or shutdown activity, notification shall be given as soon as practicable prior to the scheduled activity. Any unscheduled maintenance, startup, or shutdown activity is an emissions event and is subject to the requirements in §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and §101.222(a) of this title (relating to Demonstrations).

(1) The notification, except for boilers and combustion turbines referenced in the definition of reportable quantity in §101.1 of this title, shall identify:

(A) the name of the owner or operator;

(B) the commission air account number;

(C) the location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(F) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number (established for emissions inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(G) the expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of reportable quantity in §101.1 of this title, which through common process knowledge or past engineering analysis or testing are expected to equal or exceed the reportable quantity;

(I) the estimated total quantities for those compounds or mixtures described in subparagraph (H) of this paragraph and the authorized emissions limits;

(J) the basis used for determining the quantity of air contaminants to be emitted; and

(K) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) The notification for boilers or combustion turbines referenced in the definition of reportable quantity in §101.1 of this title shall identify:

(A) the name of the owner or operator;

(B) the commission air account number;

(C) the location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number (established for emissions Inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the duration or expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the estimated opacity and the authorized opacity limit; and

(I) the actions taken, or being taken, to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(b) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall create a final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions as soon as practicable, but no later than two weeks after the end of each scheduled activity. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a site is not normally staffed, records of scheduled maintenance, startup, and shutdown activities may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the site. Such scheduled activity records shall identify:

(1) the name of the owner or operator;

(2) the commission air account number;

(3) the location of the scheduled maintenance, startup, or shutdown activity;

(4) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(5) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number (established for emissions inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(6) the date and time of the scheduled maintenance, startup, or shutdown activity;

(7) the duration of the scheduled maintenance, startup, or shutdown activity;

(8) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of reportable quantity in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the scheduled maintenance, startup, or shutdown activity, except for boilers or combustion turbines referenced in the definition of reportable quantity;

(9) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in paragraph (8) of this subsection, except for boilers or combustion turbines referenced in the definition of reportable quantity in §101.1 of this title, which records only the authorized opacity limit during the emissions limit;

(10) the basis used for determining the quantity of air contaminants to be emitted; and

(11) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(c) For any scheduled maintenance, startup, or shutdown activity for which an initial notification was submitted under subsection (a) of this section, if the information required in subsection (b) of this section differs from the information provided under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the scheduled activity. If the owner or operator does not submit a record under this subsection, the information provided under subsection (a) of this section will be the final record of the scheduled activity.

(d) The owner or operator of a boiler or combustion turbine referenced in the definition of reportable quantity in §101.1 of this title that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emissions reports by other state or federal regulations, is exempt from creating, maintaining, and submitting records of scheduled maintenance, startup, and shutdown activities with unauthorized emissions under subsections (b) and (c) of this section. Excess emission reports that may satisfy other state or federal requirements, and which are used to satisfy this subsection must, at a minimum, contain the information required in subsection (b)of this section.

(e) The executive director may specify the amount, time, and duration of emissions that will be allowed during the scheduled maintenance, startup, or shutdown activity. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any scheduled maintenance, startup, or shutdown activity when requested by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during the scheduled maintenance, startup, or shutdown activity. For those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

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
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DIVISION 3. OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND EXCESSIVE EMISSIONS EVENTS

30 TAC §§101.221 - 101.224

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the commission to issue orders to carry out the purposes of the TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.0518(g), concerning Preconstruction Permits, which authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new sections are also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq*.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.023, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.221. Operational Requirements.

(a) No person shall cause, suffer, allow, or permit unauthorized emissions.

(b) All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(c) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the commission are not required to meet the allowable emission levels set by the rules and regulations, but must be located and operated such that a nuisance is not created at any time.

(d) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules and regulations unless specifically required by a particular regulation.

(e) Sources emitting air contaminants which cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements.

(f) The owner or operator has the burden of proof to demonstrate that the criteria identified in §101.222(a) of this title (relating to Demonstrations) for emissions events, or in §101.222(b) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The executive director or any air pollution program with jurisdiction may request documentation of the criteria in §101.222(a) and (b) of this title at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being exempt under this section.

(g) This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control a condition of air pollution.

§101.222. Demonstrations.

(a) Emissions events are exempt from compliance with authorized emission limitations, if the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and satisfies all of the following:

(1) the unauthorized emissions were caused by a sudden breakdown of equipment or process, beyond the control of the owner or operator;

(2) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided, and could not have been avoided by good design, operation, and maintenance practices;

(3) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(4) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded;

(5) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized;

(6) all emission monitoring systems were kept in operation if possible;

(7) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(8) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(9) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(10) unauthorized emissions did not cause or contribute to a condition of air pollution.

(b) Emissions from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with authorized emission limitations, if the owner or operator complies with the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements) and satisfies all of the following:

(1) the periods of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity could not have been prevented through planning and design;

(2) the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(3) if the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(4) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing emissions;

(5) the frequency and duration of operation in a scheduled maintenance, startup, or shutdown mode resulting in unauthorized emissions were minimized;

(6) all emissions monitoring systems were kept in operation if possible;

(7) the owner or operator actions during the period of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were documented by contemporaneous operating logs or other relevant evidence; and

(8) unauthorized emissions did not cause or contribute to a condition of air pollution.

§101.223. Excessive Emissions Events.

(a) The executive director shall determine when emissions events are excessive by evaluating the following criteria:

(1) the frequency of a facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(b) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had excessive emissions events. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either file a corrective action plan (CAP) or, when the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), file a letter of intent to obtain authorization from the commission for emissions from the excessive emissions events.

(1) CAPs shall be submitted to the executive director within 60 days after receiving notification that a CAP plan is required. The 60-day period may be extended once for up to 15 days by the executive director. The CAP shall, at a minimum:

(A) identify the cause or causes of each emissions event in question, including all contributing factors that led to each emissions event;

(B) specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future;

(C) identify operational changes the owner or operator will take to prevent or minimize similar emissions events in the future; and

(D) specify time frames within which the owner or operator will implement the components of the CAP.

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after initial filing of the CAP. If not disapproved within 45 days after initial filing, the CAP shall be deemed approved. The owner or operator of a facility must respond completely and adequately as determined by the executive director to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may request a written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events.

(3) If the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title, and an owner or operator of a facility elects to file a letter of intent to obtain authorization from the commission for the emissions from excessive emissions events, the owner or operator must file such letter within 15 days after receiving notification that action must be taken. If the commission denies the requested authorization, the owner or operator of a facility shall file a CAP in accordance with paragraph (1) of this subsection within 45 days after receiving notice of the commission denial.

(A) If the intended authorization is a permit, the owner or operator must file a permit application with the executive director within 120 days after the filing of the letter of intent. The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its permit application within 15 days after the date of such requests, or by any other deadline specified in writing.

(B) If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent.

(c) If an owner or operator of a site, as defined in §101.1 of this title (relating to Definitions), receives more than one excessive emissions events determination under subsection (b) of this section within a five-year period, the executive director may forward these determinations to the commission requesting that it issue an order finding that the site has chronic excessive emissions events. The owner or operator of the site would then be required to take action to reduce emissions and file either a CAP, or when the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title, a letter of intent to obtain authorization for emissions from the excessive emissions events. Orders issued by the commission under this section shall be part of the site's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a site has chronic excessive emissions events after considering the following factors:

(1) the size, nature, and complexity of the site operations; and

(2) the frequency of emissions events at the site.

(d) Exemptions from compliance with authorized emission limitations are not available to a person if the person failed to take corrective action under a CAP approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

§101.224. Temporary Exemptions During Drought Conditions.

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index for at least 30 days that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order. This section does not allow for an exemption from any federal requirement.

(1) The request must be submitted in writing to the Office of Permitting, Remediation, and Registration, Air Permits Division, and include at a minimum the following information:

(A) the site-specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative control measures which will be undertaken to minimize emissions.

(2) The executive director may authorize, by written permission, a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days under the Palmer Drought Severity Index;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will use reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section. The executive director shall notify the EPA of exemptions which will be considered for extension beyond 180 days. The executive director shall notify the EPA at least 30 days prior to commission consideration of such an extension.

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
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DIVISION 4. VARIANCES

30 TAC §§101.231 - 101.233

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.028, and 382.085.

§101.231. Petition for Variance.

Any person seeking a variance, amendment of a variance, or extension of a variance issued to that person shall file a petition on a form prepared by the commission. The form shall be furnished by the commission without charge upon request. In order to obtain a variance past

the date by which compliance is to be achieved, a person must have demonstrated continuous and substantial progress toward compliance before the date of petition.

§101.232. Effect of Acceptance of Variance or Permit.
Acceptance of a variance or a permit constitutes an acknowledgment and agreement that the holder will comply with its terms, and with the rules, regulations, and orders of the commission adopted under the TCAA.

§101.233. Transfers.
A variance or a permit is granted in person, and does not attach to the realty to which it relates. A variance cannot be transferred without prior notification to the commission. If a transfer of ownership of a source covered by a variance is contemplated by the holder of the variance, and the source and characteristics of the emissions will remain unchanged, upon notification, the executive director shall issue an endorsement to the variance reflecting the name of the new owner. Continuation of emissions by the new owner without prior notification to the commission makes the variance subject to forfeiture.

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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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION
SUBCHAPTER J. MULTIPLE PLANT PERMITS

30 TAC §§116.1011, 116.1040, 116.1041, 116.1042, 116.1050

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§116.1011, 116.1040, 116.1041, and 116.1050 and new §116.1042.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of this rulemaking is to implement legislation relating to public notice and hearing requirements. Senate Bill (SB) 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact), 77th Legislature, 2001, amended Texas Clean Air Act (TCAA), Chapter 382, Subchapter C, by amending §382.05194, Multiple Plant Permit, and by adding §382.05197, Multiple Plant Permit: Notice and Hearing. The proposed amendments and new section address the amendments to TCAA, Chapter 382, Subchapter C. The proposal also contains grammatical revisions, cross-reference corrections, and changes which conform the rule language to *Texas Register* and agency formatting requirements.

SECTION BY SECTION DISCUSSION

Section 116.1011, Multiple Plant Permit Application, is proposed to be amended to reflect new statutory requirements under TCAA, §382.05197 for a multiple plant permit (MPP) applicant to publish notice of intent to obtain the permit. Subsection (a)(5) is proposed to be deleted because information necessary to calculate the cost of public notice would no longer be needed by the executive director as part of the MPP application, since the proposal would require the applicant, rather than the commission, to publish notice of intent to obtain the permit. Minor changes proposed under §116.1011 include substituting the term "executive director" for the "commission" to more accurately reflect agency duties and responsibilities; changing the specific application references from "Form PI-1M Multiple Plant Permit Application" and "Form PI-1M" to "application form" or "form" to allow for ongoing improvements in commission application documents and flexibility under subsection (a); and adding the word "and" at the end of subsection (a)(3).

Section 116.1040, Multiple Plant Permit Public Notice, is proposed to be amended to reflect the new statutory language under TCAA, §382.05197 by amending the title of this rule and by adding new language under proposed subsections (a) - (c). The amended title of the rule reflects the inclusion of provisions to address new public participation procedures in the statute. New TCAA, §382.05197(c) provides that public participation for an MPP application filed before September 1, 2001, will be done in the same manner as provided by TCAA, §382.0561, concerning Federal Operating Permit; and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the executive director to send notice of final action to persons who comment during the comment period or during a hearing. Because the commission has developed public notice and participation requirements implementing similar language in TCAA, §382.05191 for voluntary emission reduction permits (VERP) and electric generating facility permits, the proposed requirements of §§116.1040 - 116.1042 are based on the sections in 30 TAC Chapter 116, Subchapters H and I, that implement the requirements of TCAA, §382.0561 and §382.0562. In addition, the commission's review of TCAA, §382.05194 and §382.05197 indicates that the new public notice and public participation requirements that substitute for otherwise applicable requirements under Texas Government Code, Chapter 2001, are only available for applications filed before September 1, 2001, for the initial issuance, amendment, or revocation of an MPP under §382.05194(e). As a general matter, the requirements in 30 TAC Chapter 50, relating to Action on Applications and Other Authorizations, and specifically the requirements in Subchapter G, relating to Action by the Executive Director, apply to all MPP applications regardless of the filing date for the applications.

The new language proposed in §116.1040(a) would require that applications for an MPP filed on or after September 1, 2001 are subject to the same procedural requirements of 30 TAC Chapters 39, 50, 55, and 80 that apply to applications processed under Chapter 116, Subchapter B, relating to New Source Review Permits, except that any required newspaper notice shall be published in accordance with proposed subsection (b)(1)(A).

Proposed new §116.1040(b) is based on language in existing §116.1041(c), and provides that the public notice and public participation process in TCAA, §382.05197, is only available for applications filed before September 1, 2001, for initial issuance, amendment, or revocation of an MPP. The new language proposed under paragraph (1) would require the applicant for an MPP application filed before September 1, 2001, to follow the same public notice requirements applicable to initial issuance

VERPs and electric generating facility permits that are specified in §39.403(d), except as provided by proposed §116.1040. Proposed new subparagraph (A) would require an applicant for initial issuance of an MPP to publish notice of intent to obtain the permit in accordance with the applicable requirements in §39.603, except that: the notice of a proposed MPP for existing facilities must be published in one or more state-wide or regional newspapers that provide reasonable notice throughout the state; or if the MPP for existing facilities will be effective for only part of the state, the notice must be published in a newspaper of general circulation in the area to be affected. Subparagraph (B) clarifies that the notice required under §39.603 will include a statement that any person is entitled to request a notice and comment hearing from the commission. The new requirements proposed under subparagraph (C) would allow the executive director to authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source as defined in TCAA, §382.0365(h)(2), to provide notice using an alternative means if the executive director finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements. Proposed paragraph (2) provides that any person who may be affected by emissions from a facility that is included in an MPP application under subsection (b) may request a notice and comment hearing on the MPP application within 30 days after publication of notice under §39.418, concerning Notice of Receipt of Application and Intent to Obtain Permit. In accordance with TCAA, §382.05197(c) and §382.0561, new paragraph (3) clarifies that a hearing relating to an MPP under subsection (b) will follow the procedures for a notice and comment hearing according to the proposed amendments in §116.1041. The proposed new paragraph (4) provides that the executive director's response to public comments and notice of decision relating to a permit application under subsection (b) will be conducted under the procedures of proposed new §116.1042. New paragraph (5) provides that persons affected by a decision of the commission to issue or deny an MPP application under subsection (b) will be entitled to file a motion to overturn the decision under §50.139, relating to Motion to Overturn Executive Director's Decision, and may seek judicial review under TCAA, §382.032, Appeal of Commission Action.

Proposed new §116.1040(c) specifies publication requirements for MPP renewals. Consistent with the statutory requirement in TCAA, §382.05197, new subsection (c) requires the state-wide or regional publication of any required newspaper notice when an applicant submits an application for renewal of an MPP. An MPP may potentially apply to facilities located in different areas of the state and the commission considers state-wide or regional publication an appropriate requirement for both initial issuance and renewal of an MPP. The commission is authorized to require this publication in new TCAA, §382.05197 and §382.056. The proposed deletion of the existing language under §116.1040 reflects the deletion of the previously existing statutory language under TCAA, §382.05194(d).

Section 116.1041, Multiple Plant Permit Public Comment Procedures, is proposed to be amended to reflect the new statutory language under TCAA, §382.05197(c) and (d), consistent with existing requirements for initial issuance of VERPs and electric generating facility permits to provide notice and comment hearings under TCAA, §382.0561 and §382.0562. The amended title of the rule reflects the inclusion of provisions to address new notice and comment hearing procedures in the statute. Proposed language in subsection (a) clarifies that the notice and comment hearing requirements in §116.1041 apply only to applications filed before September 1, 2001, for the initial issuance, amendment, or revocation of an MPP. New requirements proposed under subsection (b) would allow the executive director to decide whether to hold a hearing based on the reasonableness of a request. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a facility that is included in an MPP application is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from an MPP facility, and that request is reasonable, the executive director will hold a hearing. Proposed new language in subsection (c) specifies that an applicant must provide newspaper notice of a hearing on a draft permit 30 days before the hearing in compliance with specific publication and notice content requirements. Proposed subsection (d) provides procedures for submitting hearing comments, and subsections (e) - (i) describe more specific procedures relating to the hearing record (including hearing recordings, written transcripts, and written comments), requirements relating to comments and supporting materials, and changes to the draft permit. New subsection (j) provides that the executive director will respond to comments as provided in proposed new §116.1042.

The proposed deletion of the existing language under §116.1041(a) and (b) reflects the deletion of the previously existing language under TCAA, §382.05194(e) and (f), respectively. Existing subsection (c) is proposed to be deleted because equivalent language is included in proposed new §116.1040(b) consistent with TCAA, §382.05194(e).

New proposed §116.1042, Notice of Final Action, incorporates requirements in TCAA, §382.05197(c) and (d), and is consistent with existing procedures for initial issuance of VERPs and electric generating facility permits to provide notice of final decisions on applications under TCAA, §382.0561 and §382.0562. Proposed subsection (a) specifies requirements for notice of final action for applications filed before September 1, 2001 for the initial issuance, amendment, or revocation of an MPP. Proposed subsection (a) provides what must be included with the notice and who will receive the notice. Proposed subsection (b) specifies what to include in the notice of final action, including a statement about the opportunity to move for a rehearing and to seek judicial review under TCAA, §382.032.

Section 116.1050, Multiple Plant Permit Application Fee, is proposed to be amended to delete language concerning additional public notice costs and language concerning initiation of the public notice by the commission, since the proposal requires the applicant, rather than the commission, to publish notice.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments and new section are in effect, there will be no significant fiscal implications for the agency due to administration or enforcement of the proposed amendments and new section. There may be public notice costs, which are not anticipated to be significant, for units of state and local government that apply for an MPP. All other units of state and local government would not be affected by the proposed amendments and new section. An MPP is an air quality permit that is available to any regulated air emission source. This permit is a single permit for multiple plant sites that are owned or operated

by the same person or persons under common control, that may be issued if certain emission limits and public participation criteria are met.

This rulemaking is intended to implement certain provisions of SB 688, which shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be affected. The bill would allow the executive director to authorize an applicant for an MPP for an existing facility that is a small business stationary source to provide notice using alternative means.

The commission anticipates that very few, if any, units of state or local government will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications, neither of which were submitted by units of state or local government. The costs for public notice vary significantly, depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates that a newspaper that provides regional coverage throughout the state would charge approximately $3,000 for the display notice and approximately $450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately $210 for the display notice and $20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be $150. The total costs for public notice associated with MPPs would range from $380 to $3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional $450 for publication in a large city newspaper, and $20 in a smaller city newspaper.

The proposed amendments and new section would also implement other provisions of SB 688, which requires the commission to provide an opportunity for a public notice and comment hearing instead of a public meeting, the submission of public comment, and the mailed notice of the final action on an application for an MPP. The commission does not anticipate significant fiscal impacts to the agency or any other unit of state or local government due to implementation of these provisions.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed amendments and new section are in effect, the public benefit anticipated as a result of implementing the amendments and new section will be improved public notification and input due to revised notice and comment requirements for certain MPP applications.

This rulemaking is intended to implement certain provisions of SB 688, which shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be affected.

The commission anticipates that very few, if any, businesses will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications from industry. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates a newspaper that provides regional coverage throughout the state would charge approximately $3,000 for the display notice and approximately $450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately $210 for the display notice and $20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be $150. The total costs for public notice associated with MPPs would range from $380 to $3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional $450 for publication in a large city newspaper, and $20 in a smaller city newspaper.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of administration or enforcement of the proposed amendments and new section, which are intended to implement provisions of SB 688. The bill shifted the burden to provide public notice for MPPs from the commission to the permit applicant. The bill requires applicants for MPPs to publish notice of intent to obtain a permit. Applicants with existing facilities would be required to publish a notice in one or more state-wide or regional newspapers that provide reasonable notice throughout the state, unless the facility will only affect part of the state, in which case the notice would only have to be published in a newspaper of general circulation in the area to be affected. The bill would allow the executive director to authorize an applicant for an MPP for an existing facility that is a small business stationary source to provide notice using alternative means. This provision could result in cost savings, which are not anticipated to be significant, for affected small business stationary sources compared to the public notice costs presented in this fiscal note.

In order to qualify as a small business stationary source, a site is required to emit less than 50 tons per year (tpy) of any one regulated air pollutant and less than 75 tpy of all regulated air pollutants. The commission anticipates that very few, if any, small or micro-businesses will be affected by additional public notice costs over the next five years. Since the MPP became an option in 1999, the commission has only received two applications from industry. The costs for public notice vary significantly depending on the location and the anticipated environmental impact of the facility. Small town/city newspapers generally charge much less than large town/city newspapers for publication of a public notice. The commission estimates a newspaper that provides regional coverage throughout the state would charge approximately $3,000 for the display notice and approximately $450 for the legal notice. It is estimated that a smaller city newspaper would charge approximately $210 for the display notice and $20

for the legal notice. The cost for alternative language publication, if needed, is estimated to be $150. The total costs for public notice associated with multiple plant permits would range from $380 to $3,600, assuming alternative language notice is also required. If a request for notice and comment hearing is received on an application, the applicant would also be required to publish a legal notice for the hearing, which, it is estimated, would cost an additional $450 for publication in a large city newspaper, and $20 in a smaller city newspaper.

The following is an analysis of the costs per employee for small and micro-businesses that is required to public a notice of intent to obtain an MPP in one newspaper with state-wide coverage. This example also assumes a hearing will be requested. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would have to pay up to an additional $41 per employee to comply with the proposed amendments and new section. A micro-business would have to pay up to an additional $203 per employee to comply with the proposed amendments and new section.

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 reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning public notice and hearings, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rules are major environmental rules, a draft regulatory impact analysis is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to SB 688, and does not exceed the requirements of this bill. This proposal 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. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state laws (i.e., Texas Government Code, §2001.004; and TCAA, §382.05197). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for public notice and hearings. As added by SB 688, TCAA, §382.05197: 1) requires an applicant for an MPP filed before September 1, 2001, to publish notice of intent to obtain the permit as required by TCAA, §382.056, with certain exceptions; 2) allows the executive director to authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source to provide notice using an alternative means if the executive director makes certain findings; 3) requires the executive director to provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for an MPP filed before September 1, 2001, in the same manner as provided under TCAA, §382.0561 and §382.0562; and 4) allows a person affected by a decision of the executive director to issue or deny an MPP filed before September 1, 2001, to move for rehearing and entitles the person to judicial review under TCAA, §382.032. The proposed rules will substantially advance these stated purposes by providing specific procedural requirements in response to legislative changes. Promulgation and enforcement of the rules will not burden private real property. The proposed rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.) and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (31 TAC Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40 *et seq*.).

Interested persons may submit comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin at 2:00 p.m. on May 21, 2002 at the Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 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 Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information contact Ray Henry Austin, Policy and Regulations Division, at (512) 239-6814.

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (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 when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TCAA, §382.05192, which requires review and renewal of MPPs to be conducted under §382.055; TCAA, §382.05194, which authorizes the commission to issue MPPs; TCAA, §382.05197, which specifies the notice and hearing procedures for certain MPPs; TCAA, §382.055, which specifies permit review and renewal requirements; and TCAA, §382.056, which specifies notice and hearing requirements for certain air permits.

The proposed amendments and new section implement TWC, §5.103 and §5.105 and TCAA, §§382.05194, 382.05197, and 382.056.

§116.1011. Multiple Plant Permit Application.

(a) An application for a multiple plant permit (MPP) must include a completed application form [~~Form PI-1M Multiple Plant Permit Application~~]. The application form [~~Form PI-1M~~] must be signed by an authorized representative of the applicant. The form [~~Form PI-1M~~] specifies additional support information which must be provided before the application is deemed complete. In order to be granted an MPP [~~a multiple plant permit~~], the owner or operator of the existing facilities shall submit the following information to the executive director [~~commission~~]:

(1) (No change.)

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which an MPP [~~a multiple plant permit~~] application is filed prior to September 1, 2001, the information required by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application) solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit;

(3) for permitted facilities, the relevant permit; and

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

~~[(5) information necessary to calculate the cost of public notice under §116.1040 of this title (relating to Multiple Plant Permit Public Notice).]~~

(b) (No change.)

§116.1040. Multiple Plant Permit Public Notice and Public Participation.

(a) An application for a multiple plant permit (MPP) that is filed on or after September 1, 2001, is subject to the same procedural requirements of Chapters 39, 50, 55, and 80 of this title (relating to Public Notice; Action on Applications and Other Authorizations; Requests for Reconsideration and Contested Case Hearings, Public Comment; and Contested Case Hearings) that apply to applications processed under Subchapter B of this chapter (relating to New Source Review Permits), except that any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section. [~~The commission will publish notice of a proposed multiple plant permit in the *Texas Register* and in a newspaper of general circulation in the area to be affected. If the multiple plant permit will affect the entire state, the commission will publish notice in *Texas Register* and in the daily newspaper of largest circulation in Dallas and Houston and in other regional newspapers, as appropriate. The notice will include relevant information required by §39.411 of this title (relating to Text of Public Notice) and will be published not later than the 30th day before the date the commission issues the multiple plant permit. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4) of this title (relating to Changes to Facilities).~~]

(b) Applications for MPP initial issuance, amendment, or revocation that are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001, and are subject to the notice and hearing process of TCAA, §382.05197, as provided in this subsection.

(1) An applicant for an MPP shall comply with the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits as specified in §39.403(d) of this title (relating to Applicability), except as provided by this section.

(A) An applicant for an MPP shall publish notice of intent to obtain the permit as required under §39.603 of this title, except that:

(i) the notice of a proposed MPP for existing facilities shall be published in one or more state- wide or regional newspapers that provide reasonable notice throughout the state; or

(ii) if the MPP for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected.

(B) As provided in §39.411(10)(B) of this title (relating to Text of Public Notice), the notice shall include a statement that any person is entitled to request a notice and comment hearing from the commission.

(C) The executive director may authorize an applicant for an MPP for an existing facility that constitutes or is part of a small business stationary source as defined in TCAA, §382.0365(h)(2) to provide notice using an alternative means if the executive director finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching

potentially affected persons, the cost, and the consistency with federal requirements.

(2) Any person who may be affected by emissions from a facility that is included in an MPP application under this subsection may request the executive director to hold a notice and comment hearing on the MPP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any notice and comment hearing request must be made in writing during the 30-day public comment period.

(3) Any hearing for an MPP application under this subsection shall be conducted under the procedures in §116.1041 of this title (relating to Multiple Plant Permit Notice and Comment Hearings).

(4) The executive director's response to public comments and the notice of decision on whether to issue or deny an MPP application under this subsection will be conducted under the procedures in §116.1042 of this title (relating to Notice of Final Action).

(5) A person affected by a decision to issue or deny an MPP application under this subsection may seek review, as appropriate, under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

(c) For applications for renewal of an MPP, any required newspaper notice shall be published in accordance with subsection (b)(1)(A) of this section.

§116.1041. Multiple Plant Permit Notice and [~~Public~~] Comment Hearings[~~Procedures~~].

(a) The notice and comment hearing requirements apply only to an application filed before September 1, 2001, for a multiple plant permit (MPP) initial issuance, amendment, or revocation. [~~The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this section as part of the notice described in §116.1040 of this title (relating to Multiple Plant Permit Public Notice) not later than the 30th day before the date of the meeting.~~]

(b) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a facility that is included in an MPP application is unreasonable. If a hearing is requested by a person who may be affected by emissions from a facility that is included in an MPP application, and that request is reasonable, the executive director will hold a hearing. [~~If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The response will be made available to the public, and the commission will mail the response to each person who made a comment.~~]

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the facility that is included in an MPP application is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

[~~(c) Applications for multiple plant permit issuance, amendment, or revocation which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001.~~]

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The executive director may set reasonable time limits for oral statements, and may require the submission of statements in writing.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the executive director may extend the period for submitting written comments beyond the close of the hearing.

(e) The agency will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) federal or state statutes, regulations, and rules;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The executive director will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments relating to whether the draft permit complies with the requirements of this subchapter.

(j) The executive director will respond to comments consistent with §116.1042 of this title (relating to Notice of Final Action).

§116.1042. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, notice will be sent by first class mail of the final action on the application for initial issuance, amendment, or revocation of a multiple plant permit that was filed before September 1, 2001. The notice will include the information required by §39.420(a)(1) - (2) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and will be sent to any person who commented during the public comment period or at the hearing, and to the recipients specified in §39.420(b)(1) - (3) and (5) - (6) of this title.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the commission may petition for a rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, Appeal of Commission Action.

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit (MPP) shall remit, at the time of application for such permit, a fee of $450 [~~plus the estimated public notice cost for the permit consistent with the public notice requirements in §116.1040 of this title (relating to Multiple Plant Permit Public Notice)~~].

(1) Fees will not be charged for MPP [~~multiple plant permit~~] alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. [~~If the applicant withdraws the application for the permit prior to initiation of the public notice process by the commission, the estimated cost of public notice will be refunded to the applicant.~~] No fees will be refunded after a deficient application has been voided [~~or after initiation of the public notice process by the commission~~].

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202269
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-0348

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CHAPTER 220. REGIONAL ASSESSMENTS OF WATER QUALITY

The Texas Natural Resource Conservation Commission (commission) proposes to repeal Subchapter A, Program for Monitoring and Assessment of Water Quality by Watershed and River Basin, §§220.1 - 220.7; and Subchapter B, Program for Water Quality Assessment Fees, §220.21 and §220.22. The commission proposes to concurrently replace the repealed sections with new §§220.1 - 220.8.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The proposed rulemaking would repeal rules relating to WQAFs and move them to new 30 TAC Chapter 21, Water Quality Fees. Concurrently, new Chapter 21 is proposed in this issue of the *Texas Register*. This rulemaking would also repeal and reformat provisions that are still applicable to the water quality assessment program, also referred to as the Texas Clean Rivers Program (TCRP).

SECTION BY SECTION DISCUSSION

Existing §§220.1 - 220.7 are proposed to be repealed because they would be replaced with new §§220.1 - 220.8 for the purpose of non-substantive formatting. These provisions are not being substantively changed.

Existing §220.21 and §220.22 are proposed to be repealed because the fee rules for this program are concurrently proposed in new Chapter 21.

Section 220.1, Purpose and Scope

New §220.1(a) would provide that the purpose and scope of the chapter is to establish procedures for the implementation of the TCRP.

New §220.1(b) would provide that river authorities or designated local governments shall be eligible for reimbursement based on equitable apportionment and that allocation procedures will be periodically reviewed.

Section 220.2, Definitions

New §220.2 would include definitions for the following words used in this chapter: assessment report; designated local government; nonpoint source pollution; pollution; quality assurance project plan; river authority; river basins and coast basins; total maximum daily load; unclassified waters; wastewater permit; water right; and work plan.

Section 220.3, Responsibilities of the Commission

New §220.3(a) would provide that the commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality.

New §220.3(b) would provide that the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the TCRP.

New §220.3(c) would provide that the commission will develop quality control/quality assurance procedures to insure that water quality data collected will maintain statewide consistency.

New §220.3(d) would provide that the commission has the primary responsibility for implementation of water quality management functions.

New §220.3(e) would provide that the commission will utilize water quality assessments to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

New §220.3(f) would provide that the commission will assess and collect fees from wastewater permit holders and water right holders and will apportion those funds equitably among the basins.

Section 220.4, Responsibilities of River Authorities and Designated Local Governments

New §220.4(a) would provide that each river authority and designated local government that has entered into an agreement with the commission shall: organize and lead a basin-wide steering committee; develop and maintain a basin-wide water quality monitoring program; establish and maintain a watershed and river basin water quality database and/or clearinghouse; identify water quality problems and known pollution sources and set priorities for taking appropriate actions; develop a process for public participation; recommend water quality management strategies; and develop work plans.

New §220.4(b) would provide that each local government or other agency that collects water quality data within the watershed shall cooperate in developing the basin monitoring plan and assessment.

New §220.4(c) would provide that monitoring and assessment is a continuing duty and shall be revised periodically as appropriate.

Section 220.5, Responsibilities of Steering Committees

New §220.5(a) would provide that the steering committee's role is advisory in nature and will involve assistance with the review of local issues and creation of priorities.

New §220.5(b) would provide that a steering committee established by the commission and contracted to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to certain requirements related to agency advisory committees.

New §220.5(c) would provide that steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities.

Section 220.6, Reporting Requirements

New §220.6(a) would provide that each river authority will submit a written summary report to the appropriate entities at the appropriate year of the permitting cycle.

New §220.6(b) would provide that each river authority and designated local government will develop a Basin Highlight Report annually to be provided to each member of the basin steering committee and all fee payers in the basin.

Section 220.7, Leveraging of Funds to Support Federal and State Grant Programs

New §220.7 would provide that the commission, river authorities, and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall goals of this chapter.

Section 220.8, Allocation of Water Quality Fee Revenue for the Purpose of Regional Assessments of Water Quality

New §220.8(a) would provide that a river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

New §220.8(b) would provide that the schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed new and repealed rules are in effect, there will be no fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed rules.

The proposed rules are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WQAF program language from Chapter 220, and move the remaining pertinent language to new Chapter 21, concurrently proposed in this issue of the *Texas Register*. Additionally, this rulemaking also repeals and replaces rules for the purpose of non-substantive formatting. Units of state and local government will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed new and repealed rules are procedural in nature and are not anticipated to result in fiscal implications for units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed new and repealed rules are in effect, the public benefit anticipated as a result of implementing the rules will be compliance with legislative requirements to consolidate the WQAF and the WTF into one chapter.

The proposed rules are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WQAF program language from Chapter 220, and move the remaining pertinent language to new Chapter 21, concurrently proposed in this issue of the *Texas Register*. Additionally, this rulemaking also repeals and replaces rules for the purpose of non-substantive formatting. Individuals and businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed new and repealed rules are procedural in nature and are not anticipated to result in fiscal implications for individuals or businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed new and repealed rules, which are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WQAF program language from Chapter 220, and move the remaining pertinent language to new Chapter 21, concurrently proposed in this issue of the *Texas Register*. Additionally, this rulemaking also repeals and replaces rules for the purpose of non-substantive formatting. Small and micro- businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed new and repealed rules are procedural in nature and are not anticipated to result in fiscal implications for small and micro-businesses.

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 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 rulemaking does not

meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking repeals rules relating to fees for this program; the new fee rules are proposed in new Chapter 21. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The primary purpose of this rulemaking is to repeal rules relating to fees for this program; the new fee rules will be proposed in new Chapter 21. The repeal of these rules will not burden private real property because the repeal of these fees does not relate to private real property. The rulemaking also repeals and replaces rules for the purpose of non-substantive formatting which also will not burden private real property because it does not relate to private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The commission reviewed the rulemaking and found that the proposed repeals and new 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, nor do they affect any action or authorization identified in §505.11. This proposed rulemaking concerns assessments of water quality and is intended to repeal Subchapters A and B of Chapter 220, and replace the chapter with language from Subchapter A that is applicable to the water quality assessment program, while Subchapter B will be replaced by a new Chapter 21. Therefore, the rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking with the CMP may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 21, 2002 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

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 2001-098-220-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

SUBCHAPTER A. PROGRAM FOR MONITORING AND ASSESSMENT OF WATER QUALITY BY WATERSHED AND RIVER BASIN

30 TAC §§220.1 - 220.7

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

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, (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; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

The proposed repeals implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF.

§220.1. Purpose and Scope.

§220.2. Definitions and Abbreviations.

§220.3. Responsibilities of the Commission.

§220.4. Responsibilities of River Authorities and Designated Local Governments.

§220.5. Responsibilities of Steering Committees.

§220.6. Reporting Requirements.

§220.7. Leveraging Funds to Support Federal and State Grant Programs.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202313
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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SUBCHAPTER B. PROGRAM FOR WATER QUALITY ASSESSMENT FEES

30 TAC §220.21, §220.22

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed 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; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

The proposed repeals implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF.

§220.21. Water Quality Assessment Fees.

§220.22. Allocation of Water Quality Assessment Fee Revenue.

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

Filed with the Office of the Secretary of State on April 12, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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30 TAC §§220.1 - 220.8

STATUTORY AUTHORITY

The new rules are proposed 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; §26.0291, which established a water quality fee on wastewater permit holders and water right holders; and §26.0235, which describes the TCRP.

The proposed new rules implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF.

§220.1. Purpose and Scope.

(a) The purpose of this chapter is to establish procedures for the implementation of the Texas Clean Rivers Program under Texas Water Code (TWC), §26.0135, which commission program monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001 (5)). The commission has the responsibility of ensuring that regional monitoring and assessments of water quality by watershed and river basin shall be conducted by the river authorities and designated local governments that have entered into cooperative agreements with the commission, or by the commission where a river authority does not exist or is unwilling to participate. Whenever feasible the monitoring and assessment will be the result of a cooperative partnership between river authorities, designated local governments, other political subdivisions, other state agencies, and the commission to provide the commission and other state agencies, river authorities, and local governments with sufficient information to take appropriate corrective action necessary to meet the goals of the TWC. The regional water quality monitoring and assessment program shall be designed to allow citizens and private organizations opportunities for involvement in protecting the state's water resources. The monitoring program shall provide data to identify significant, long-term water quality trends, characterize water quality conditions, support the wastewater discharge permitting process including support for the total maximum daily load process as necessary, and classify unclassified streams. The assessments must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed.

(b) A river authority or designated local government shall be eligible for reimbursement of the actual costs of administration of the Texas Clean Rivers Program and implementation of the provisions of this chapter. The schedule and amount of any reimbursement shall be based on an equitable apportionment among basins. The allocation procedure shall be reviewed periodically and may be adjusted to reflect results of contractor evaluations, to address emerging issues, or to focus on problem areas identified in the water quality assessments.

§220.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings. Unless specifically defined for this chapter, definitions for other words and terms may be found in Chapter 3 of this title (relating to Definitions).

(1) Assessment report -- A comprehensive record of historical, existing, and projected water quality conditions of a watershed.

(2) Designated local government -- A local government that has been designated through cooperative agreement or contract with the commission to perform a regional assessment pursuant to this chapter.

(3) Nonpoint source pollution -- Generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Any source of pollution that is not subject to regulation as a "point source."

(4) Pollution -- The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) Quality assurance project plan (QAPP) -- The formal document which describes in comprehensive detail the necessary quality assurance/quality control activities that must be implemented to ensure that results of work performed will satisfy stated performance criteria.

(6) River authority -- Any district or authority created by the legislature under Texas Water Code (TWC), §30.003, which contains an area within its boundaries of ten or more counties and any other river authority or special district created under Article III, §52 and Article XVI, §59 of the Texas Constitution, which are designated by rule of the commission to comply with this chapter.

(7) River basins and coastal basins -- The river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Water Development Board, including, but not limited to, the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes and portions of them, as well as the lands drained by them.

(8) Total Maximum Daily Load (TMDL) -- Water quality-based process used to establish pollution control limits for waters not meeting water quality standards. The process is established under the federal Clean Water Act to establish control limits where technology-based controls are not adequate and should include determination of loading capacity, allocations of wasteload and loading from other pollutant sources, and an appropriate margin of safety.

(9) Unclassified waters -- Those waters for which no classification has been assigned and which have not been identified in Appendix A of §307.10 of this title (relating to Appendices A- E).

(10) Wastewater permit -- A permit issued by the commission under authority of TWC, Chapter 26, including those permits issued under the authority of TWC, Chapter 26 and other statutory provisions (such as the Texas Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under TWC, Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(11) Water right --A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(12) Work plan -- A document outlining the proposed scope of work, including a time schedule and cost expenditures, from a river authority or designated local government to perform a service and/or provide a comprehensive regional assessment of the watershed.

§220.3. Responsibilities of the Commission.

(a) The commission shall establish a program to provide oversight and evaluation of the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

(b) Subject to available funding described in Chapter 21 of this title (relating to Water Quality Fees), the commission shall develop cooperative agreements and contracts with river authorities and designated local governments to implement the Texas Clean Rivers Program. These contracts and cooperative agreements will be administered by the commission staff in accordance with the most recent State of Texas Uniform Grants and Contract Management Standards for State Agencies (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriations Act.

(c) As part of the administration of this program the commission will develop quality control/quality assurance procedures to insure that water quality data collected under this chapter will maintain statewide consistency and will become part of the statewide database to be used in establishing water quality management permitting decisions.

(1) The commission will establish a schedule for review and approval of quality assurance plans and updates which describe procedures to be implemented by contracting agencies. Use of the quality assurance plans by commission program staff will assure that water quality monitoring data are collected consistent with statewide objectives.

(2) The commission program staff will conduct periodic program audits of contractors and subcontractors using a risk-based procedure to insure adherence to the quality assurance procedures.

(d) The commission has primary responsibility for implementation of water quality management functions and will implement these functions on a watershed basis in consideration of priorities established by river authorities and basin steering committees. Data collected in accordance with an approved quality assurance plan will be added to the statewide water quality database and used for the development and implementation of water quality management functions of the commission including review and revision of surface water quality standards and wastewater discharge permits.

(e) The commission will utilize water quality assessments developed in this program, along with other water quality assessments and studies in determining the need for cities with populations of 10,000 or more to develop water pollution control and abatement programs to reduce water pollution from non-permitted sources.

(f) The commission will assess and collect fees from wastewater permit holders and water right holders as described in Chapter 21 of this title and will apportion these funds equitably among the basins.

§220.4. Responsibilities of River Authorities and Designated Local Governments.

(a) Each river authority and designated local government that has entered into an agreement with the commission to perform duties under this chapter shall:

(1) organize and lead a basin-wide steering committee to assist with the development of water quality objectives and priorities for the basin and to fulfill responsibilities described in §220.5 of this title (relating Responsibilities of Steering Committees). Membership of the committee will reflect a diversity of interests in the basin and will include persons paying fees described under Chapter 21 of this title (relating to Water Quality Fees), the Texas State Soil and Water Conservation Board and other appropriate state agencies (for example, Texas Parks and Wildlife Department, Texas Water Development Board, Texas General Land Office, Texas Department of Health, Texas Department of Agriculture, Texas Railroad Commission, and the Texas Department of Transportation), private citizens, representatives from political subdivisions, and other persons with an interest in water quality matters in the watershed or river basin;

(2) develop and maintain a basin-wide water quality monitoring program that eliminates duplicative monitoring, facilitates the assessment process to identify problem areas and support long-term trend analyses, and targets monitoring to support the wastewater discharge permitting and standards process.

(A) A quality assurance project plan must be developed and approved to support all data collection activities. Data collected by subcontractors and others under this program must conform to the approved quality assurance project plans.

(B) The water quality monitoring program shall address collection of baseline water quality data to support trend analyses and development of the statewide water quality inventory required under federal Clean Water Act, §305(b).

(C) The water quality monitoring program shall include site-specific data collection to support the wastewater discharge permitting process for fee payers in the basin. Data collection efforts for this aspect of the program should be coordinated with the permitting cycle developed in accordance with Texas Water Code, §26.0285 (relating to permitting by basin).

(D) The water quality monitoring program shall include watershed specific data collection to address priority water quality problem areas identified by river authority trends analyses or steering committee input.

(3) establish and maintain a watershed and river basin water quality database and/or clearinghouse composed of quality-assured data, river authority programs, wastewater discharge permit holders, state and federal agencies, and other relevant data sources. This data shall be submitted to the commission for inclusion in the State of Texas Surface Water Quality Monitoring database and shall be made available to any interested person.

(A) Each river authority and designated local government shall establish and maintain the technology to aid in the electronic dissemination of water quality data and information for their basin. Water quality data for the basin shall be submitted to the commission at a minimum of once every six months in an agreed format for inclusion in the statewide water quality database.

(B) River authorities and designated local governments shall participate in task force meetings to establish, review, and update data management procedures to reflect changes in information management technology.

(4) identify water quality problems and known pollution sources and set priorities for taking appropriate actions to eliminate those problems and sources.

(A) Each river authority shall utilize the commission's procedures for data evaluation and analyses to the maximum extent possible. If alternative evaluation processes are necessary, the procedure must be presented in writing to the commission for approval by the executive director prior to its application.

(B) In order to assure inclusion in the development of the statewide water quality inventory, the analytical procedures shall be comparable to those used by the commission.

(C) Steering committees shall be provided the opportunity to actively participate in the identification of priority problem areas and the development of appropriate actions to address the problems and pollutant sources. Steering committees shall have the opportunity to determine the priority of maintaining or protecting watersheds with existing good quality water.

(5) develop a process for public participation that includes the basin steering committee and that provides for meaningful review and comments by private citizens and organizations in the local watersheds;

(6) recommend water quality management strategies for correcting identified water quality problems and pollution sources;

(7) develop work plans which include priorities of the state and regional water quality management program. Upon agreement between the commission, the river authority, and/or designated local government, the provisions of the work plan become the scope of work of the program contract or cooperative agreement.

(b) Each local government or other agency that collects water quality data within the watershed shall cooperate with the river authority or designated local government in developing the basin monitoring plan and assessment by providing to the river authority all of the information available to that organization about water quality within its jurisdiction, including the extraterritorial jurisdiction of a municipality. Data collected by local governments must be consistent with an approved quality assurance plan to be included for wastewater discharge permitting and standards decisions.

(c) Monitoring and assessment is a continuing duty and shall be revised periodically with appropriate amendments and updates to the quality assurance plans to reflect changes in procedures and factors subject to the assessment.

§220.5. Responsibilities of Steering Committees.

(a) The steering committee's role is advisory in nature and will involve assistance with the review of local issues and creation of priorities by watershed for the basin. Committee members should also assist with the review and development of work plans, reports, basin monitoring plans, and basin action plans for the basin.

(b) A steering committee established by the commission and contractor to implement this program in areas without a river authority or other designated local government willing to carry out the program is not subject to Revised Statutes, Article 6252-33 (relating to agency advisory committees).

(c) Steering committees should serve as the focus of public input to assist the river authorities and other agencies to develop water quality objectives and priorities by watershed and by basin that are achievable considering available technology and economic impact.

§220.6. Reporting Requirements.

(a) Summary reports. In the appropriate year of the permitting cycle developed in accordance with Texas Water Code, §26.0285 (30 TAC §305.71) relating to Basin Permitting, each river authority will submit a written summary report to the commission, the State Soil and Water Conservation Board, and Texas Parks and Wildlife Department on the water quality of the watershed or river basin.

(1) The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source or use impairment, and recommended actions that may be taken to address those concerns.

(2) The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process.

(3) Prior to submittal of the report to the agencies listed in subsection (a) of this section, the river authority will present the report to the basin steering committee for approval and will also make the report available to water right holder and wastewater permit holders for review and comment.

(4) All comments regarding satisfaction with or suggestions for modification of the report for the watershed, the operation and/or effectiveness of the monitoring and assessment program, and the use of funds shall be considered, summarized, and submitted, along with the approved summary report, to the governor, the lieutenant governor, and the speaker of the house of representatives not later than 90 days after submission to the commission and other agencies listed in paragraphs (1) - (3) of this subsection.

(b) Basin highlight reports. Each river authority and designated local government will develop a basin highlight report annually to be provided to each member of the basin steering committee and all fee payers within the basin. This report should summarize Texas Clean Rivers Program activities conducted in the basin. Procedures for electronic distribution should be developed to ensure most efficient availability to the public.

§220.7. Leveraging of Funds to Support Federal and State Grant Programs.

The commission, river authorities, and designated local governments may use funding from this chapter to leverage other state and federal program funds to support the overall water quality monitoring and assessment goals of this chapter.

§220.8. Allocation of Water Quality Fee Revenue for the Purpose of Regional Assessments of Water Quality.

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §220.4 of this title (relating to Responsibilities of River Authorities and Designated Local Governments).

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202315
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

30 TAC §§305.501 - 305.507

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

The Texas Natural Resource Conservation Commission (commission) proposes to repeal Subchapter M, Waste Treatment Inspection Fee Program, §§305.501 - 305.507.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2912, §§3.04 - 3.06, 77th Legislature, 2001 mandates the commission to consolidate the water quality assessment fee (WQAF) and the waste treatment inspection fee (WTF). The proposed rulemaking is intended to repeal the existing WTF program provisions. These provisions with changes will be moved to and proposed concurrently in this issue of the *Texas Register* in new 30 TAC Chapter 21, Water Quality Fees.

SECTION BY SECTION DISCUSSION

Sections 305.501 - 305.507 are proposed for repeal because the WTF program has been revised as a result of HB 2912, §§3.04 - 3.06. The fees for this program will be proposed in new Chapter 21.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed repeals are in effect, there will be no fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed repeals.

The proposed repeals are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Units of state and local government will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed repeals are in effect, the public benefit anticipated as a result on implementing the repeals will be compliance with legislative requirements to consolidate the WQAF and the WTF into one chapter.

The proposed repeals are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Individuals and businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for individuals or businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed repeals, which are intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to consolidate the WQAF and the WTF into one chapter. This rulemaking is intended to repeal obsolete existing WTF program language from Chapter 305, and move the remaining pertinent language to new Chapter 21, that is proposed to be created in concurrent rulemaking. Small and micro-businesses will be required to comply with new fee provisions to be implemented by the Chapter 21 rulemaking. The proposed repeals are procedural in nature and are not anticipated to result in fiscal implications for small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed repeals 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 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 rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking is intended to repeal rules which must be revised as a result of HB 2912, §§3.04 - 3.06 because the WTF is now part of the water quality fee which will be in new Chapter 21.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed repeals pursuant to Texas Government Code, §2007.043. The specific purpose of this rulemaking is to repeal rules which were contained in Chapter 305 that became obsolete as a result of HB 2912, §§3.04 - 3.06. The repeal of these rules will not burden private real property because these rules will no longer be used. The rules did not affect private real property, nor does the repeal of these rules affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the repeals and found they are identified in the Coastal Coordination Act (CCA) Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeals are consistent with CMP goals and policies; will not have direct or significant adverse effect on any Coastal Natural Resource Areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the repeals will not violate (exceed) and standards identified in the applicable CMP goals and policies. The rulemaking repeals fee rules which are procedural mechanisms for paying for commission programs.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 21, 2002 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

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 2001-098-220-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §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 §26.0291, which establishes an annual water quality fee on wastewater permit holders and water right holders.

The proposed repeals implement HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which mandates the commission to consolidate the WQAF and the WTF.

§305.501. Purpose.

§305.502. Definitions and Abbreviations.

§305.503. Fee Assessment.

§305.504. Fee Payment.

§305.505. Fund.

§305.506. Cancellation, Revocation, and Transfer.

§305.507. Failure to Make Payment.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202316
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Natural Resource Conservation Commission (commission or agency) proposes to repeal §§312.4, 312.10 - 312.12,

and amend §312.13. The commission proposes to concurrently replace the repealed sections with new §§312.4, and 312.10 - 312.12.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of this proposed rulemaking is to implement House Bill (HB) 2912, §9.05, 77th Legislature, which requires permits for the land application of Class B sewage sludge after September 1, 2003. The commission simultaneously proposes the repeal and new sections of §§312.4, and 312.10 - 312.12, because the revisions required in order to implement legislative provisions are so extensive that is easier to follow the rules by only showing them as new language. The proposed new sections retain as much of the existing language as feasible. The rulemaking also includes provisions relevant to Class B sewage sludge and other materials regulated by the chapter.

HB 2912, §9.05 added to Texas Health and Safety Code (THSC), new §361.121, which requires that a permit holder must report any non-compliance of the permit conditions or applicable permit rules to the commission. The legislation also stipulates that a permit applicant must submit information regarding the hydrologic characteristics of the surface water and groundwater at and within one-quarter mile of any land application unit. Unrelated to legislative implementation, the rulemaking also proposes to update the existing rules, increase clarity, correct typographic and grammatical errors, correct outdated citations and names, and to correct inconsistencies and fix errors in the existing rules, as discussed in the SECTION BY SECTION DISCUSSION portion of the preamble.

The key change for implementing legislation is that, beginning September 1, 2003, all sites which land apply Class B sewage sludge will be required to have a valid permit instead of a registration. The provisions for land application of Class B sewage sludge under a registration will expire on August 31, 2003. Those sites that are currently registered exclusively for land application of Class A sewage sludge, water treatment sludge, or domestic septage are not affected by the proposed rulemaking.

Also proposed in this rulemaking is the introduction of a new fee structure for issuing Class B sewage sludge land application permits. By statute, the fees must be from $1,000 to $5,000 based on the amount of sludge to be land applied on an annual basis.

One significant provision not related to HB 2912 is proposed in new §312.4(b), to allow the executive director (ED) to deny a request for authorization (submitted via a notice of intent) regarding the proposed activities related to storage, land application, and marketing and distribution of Class A sewage sludge. Another significant proposed provision deals with soil sampling for beneficial use sites. Under the existing rules, applicants are allowed to sample at the rate of one sample per 80 acres and to change the frequency by including a sampling plan in their application. The commission proposes in the new rules to require the frequency of one sample per 80 acres or less to apply in all cases and to allow the use of alternate ways of defining the areas to be sampled when described in detail in a sampling plan submitted with the application.

SECTION BY SECTION DISCUSSION

Existing §§312.4, and 312.10 - 312.12 are proposed to be repealed and replaced with new §§312.4, and 312.10 - 312.12 for the purpose of legislative implementation. The proposed new sections retain as much of the existing language as feasible.

In addition to the provisions mandated by HB 2912, §9.05, the rulemaking also proposes throughout to improve clarity and to correct inconsistencies, outdated citations and names, and grammatical/typographic errors. The proposed language is made clearer and simpler where possible, both by rewording and reformatting of existing language. Throughout the language, the commission proposes where appropriate to clarify that the generic term "sewage sludge" includes domestic septage (although since domestic septage is not Class A or Class B sewage sludge, those more specific terms do not include it) and to substitute the word "commission" for the acronym "TNRCC". In HB 2912, Article 18, the 77th Legislature changed the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002, so a more generic term is used in the proposed language where practical.

Section 312.4 - Requirements for Sewage Sludge Permit, Registration, or Notification

New §312.4 would change the section title to "Requirements for Sewage Sludge Permit, Registration, or Notification." New §312.4(a) would add the temporary storage of waste incidental to secondary transportation to the list of types of storage that do not require a permit; such storage is required at Type V Liquid Waste Transfer Stations, which can be authorized under registrations if receiving less than 32,000 gallons per day of liquid wastes. To clarify that provisions in existing registrations allowing the use of Class B sewage sludge will no longer be effective after August 31, 2003, new §312.4(a)(1) would provide that any provisions allowing the use of Class B sewage sludge in registrations will no longer be valid after that date and that such activity will require a permit. To be consistent with 30 TAC §50.135 concerning Effective Date of Executive Director Action, new subsection (a)(2) would clarify that the effective date of a permit is the date that the ED signs it. New subsection (a)(3) would specify that certain information relating to permits must be confirmed or updated under certain conditions or upon request. New subsection (a)(4) would provide that if a permit is required under this chapter, all activities related to this chapter (except transportation) at that site must be incorporated into the permit.

New §312.4(b) would change and update notifications of the use, distribution, or storage of Class A sewage sludge that meets the metal limits in §312.43(b)(3) and vector attraction reduction requirements at the point of generation. New subsection (b)(1) would provide that the exemption for Class A sewage sludge from registration requirements apply also to permit requirements for clarity. New subsection (b)(2) would simplify language concerning the filing of a notice of intent (for marketing and distributing, land applying, or storing Class A sewage sludge while requiring that the notices be sent by certified mail, return receipt requested; and proposes clearer language on the content of a notice of intent for activities related to Class A sewage sludge in subsection (b)(2)(C). New subsection (b)(3) would provide a mechanism for the ED to deny authorization for an activity requested in a notice of intent within 30 days after the notice is received. New subsection (b)(4) would remove the requirement to use certain forms for annual reports, to clarify that the reports must show in detail the activities that occurred during the year, and to clarify that the report can be combined with certain other annual reports required by the chapter if the person filing the report is engaged in activities covered by the other reports.

New §312.4(c)(1) would provide that sites can be permitted for land application instead of being registered for this activity. New subsection (c)(2) would provide that the provisions for land application of Class B sewage sludge in registrations will expire on August 31, 2003, but that provisions for applying other materials will continue. New subsection (c)(3) would provide that applications to register sites for the land application of Class B sewage sludge will not be accepted after the effective date of these rule changes, that permit applications must be submitted instead, and that only one application will be processed for any site. New subsection (c)(4) would provide for the removal of the provisions in existing subsection (c)(2) and to change the effective date of registrations to the date signed by the ED, in order to be consistent with changes to §50.135.

New §312.4(d) deletes outdated language. New §312.4(e) deletes language indicating that §312.4(b) allows land application of sewage sludge without a prior written authorization, and to substitute "commission" for "executive director" as a more general term (since some permits may require orders from the commission in order to be issued).

New §312.4(f) would provide for base fees for permits to land apply Class B sewage sludge on a new schedule. New subsection (f)(1) would provide that the fees are for applying for the permit; that the fees in this subsection replace those in 30 TAC §305.53; that the final decision on an application cannot be made until the fee is paid; and that the fees be paid to the commission (showing the new name for the agency that takes effect on September 1, 2002) at the time applications for new permits, amendments, renewals, modifications, and transfers are submitted. New subsection (f)(2) would provide that applications related to permits for the land application of Class B sewage sludge cannot be processed until all delinquent annual fees and administrative penalties for the applicant and site have been paid. This requirement can be waived by the ED for good cause if the applicant was not the permittee at the time that the fees or penalties became delinquent. Entities to whom a permit is transferred become liable for any outstanding fees and associated penalties. New subsection (f)(3) provides that half of a permit fee can be refunded upon written request if a permit is not issued; although such refunds are not covered in HB 2912, §9.05, the language in the legislation specifies that the fees are for issuance of a permit. New subsection (f)(4) would provide the fee schedule for permit applications; the schedule covers fees between $1,000 and $5,000 based on the amount of Class B sewage sludge to be land applied annually under the permit, as required by statute.

Section 312.10 - Permit and Registration Application Processing

New §312.10(b) would reference the parts of the rules where specific information required for permit and registration applications is proposed, rather than listing certain specific information that is required for both permit and registration applications. The commission proposes to move the language in existing §312.10(b)(1) - (6) and (c), all of which pertain to the items to be included in permit and registration applications, to new §312.11 and §312.12, so that required information for applications for registrations and permits are together in those sections.

New §312.10(c) would retain the existing language §312.10(d) with minor corrections for other proposed changes. New subsection (d) would reference 30 TAC Chapter 39 rather than listing information to be included in notices of receipt of applications. New subsection (e) would update citations in language from existing subsection (f) and to add "land application" and "storage" to the list of types of permits covered by the subsection, since permits are also required for such activities under some circumstances. New subsection (f) would expand applicability to all types of permit applications since the processing requirements apply to all types of permits under this chapter. New subsection (g) would retain the processing criteria for registrations (existing §312.10(h)) and, when a permit application is filed, to allow a registration that would otherwise expire to remain in effect until a final decision is made on the permit or until September 1, 2003, whichever occurs first. New subsection (h) includes the provisions from the existing subsection (i) with clarification that cancellations are not contingent upon the executive director informing the other party affected. New subsections (i) - (k) would expand the applicability to permits for beneficial use in addition to registrations and to change terms specific to registrations to more generic language since some sites will also be permitted in the future. New subsection (k) would differentiate the criteria for major amendments to permits and registrations.

Section 312.11 - Permits

New §312.11(a) would make the section applicable to all types of permits under the chapter, rather than only disposal and incineration permits. Similarly, new subsection (b) would expand the processing standards to apply to all types of permits under the chapter. New subsection (c) would reference other chapters in this title that specify elements of permit applications and to list additional requirements for permits under this chapter in associated paragraphs. New subsection (c)(1) would provide the additional criteria for maps depicting the site and surrounding properties for disposal and incineration applications, which retains the requirement to show information on landowners within one- half mile of the site and adds requirements to send information on landowners names and addresses in multiple formats. New subsection (c)(2) would provide similar criteria for these maps for other types of permits under the chapter, which only require information on adjacent landowners but duplicate the requirements for multiple formats above. New subsection (c)(3) would require a notarized affidavit verifying land ownership or landowner agreement to the proposed activity (existing §312.10(b)(4)). New subsection (c)(4) would require that all permit applications be submitted in quadruplicate form.

New §312.11(d) would list additional requirements for applications for permits to land apply Class B sewage sludge, which would not apply to other permits under the chapter. New subsection (d)(1) would cite the requirements for registration applications for certain information that is also needed in applications under this subsection. New subsection (d)(2) would provide the requirements for soil sampling for metals and new subsection (d)(3) would provide the requirements for soil sampling for nutrients, salinity, and pH. The new language differs substantively from the language that had applied to registrations in the following ways: 1.) the minimum rate of sampling is set at one composite sample from each 80 acres or less of area being sampled; 2.) alternate lower sampling frequencies are no longer allowed; and 3.) an alternate method of defining areas to be sampled is allowed if a sampling plan is included in the application to show that the soils present have been adequately tested. New subsection (d)(4) would add a requirement that applicants furnish documentation regarding the hydrologic characteristics of the surface and groundwater within one- quarter mile of the site, as required by the statute. New subsection (d)(5) would require four copies of applications to be submitted.

New §312.11(e) would expand applicability of permit characteristics and standards to all types of permits covered by the chapter. New subsection (f) would require reporting of noncompliance with permit conditions and to state that this provision must appear in all beneficial use permits, as required by statute; new subsection (f)(1) - (5), would provide the minimum requirements for this reporting. New subsection (g) would require that each permit for the land application of Class B sewage sludge include the maximum amount of sludge that can be applied under the permit, as required by statute. New subsection (h) would cite the requirements that apply to amendments and renewals of permits covered by this chapter and to describe the obligation for permittees to provide written notice of changes under certain conditions.

Section 312.12 - Registration of Land Application Activities

New §312.12(a) would provide that, after August 31, 2003, all registrations for the beneficial use of Class B sewage sludge will be void. Registrations for the beneficial use of Class A sewage sludge, water treatment plant sludge, and domestic septage would remain in effect until other action occurs.

New §312.12(b) would retain with changes the language from existing §312.12(a), to add a reference to §312.11 (since permits would apply to some beneficial use sites after the effective date of these rule revisions), and to make changes in the associated paragraphs. New subsection (b)(1) would add a requirement that forms approved by the agency be used when applying for a registration action, to specify that the appropriate number of copies be submitted, and to provide specific information requirements in the associated subparagraphs. New subsection (b)(1)(A) would retain the requirement that applications provide a description of the sewage sludge and its composition. New subsection (b)(1)(B) would clarify that the provision applies to all sewage sludge to be applied to the site, including domestic septage. New subsection (b)(1)(C) would provide for language that is grammatically compatible with the listed information in the associated clauses. The clauses are retained intact, except that in new subsection (b)(1)(C)(v) would delete the exemption from resubmitting soils data that was submitted since August 19, 1993; this change would require more current and complete data in all applications to allow for more comprehensive public review and comment, as well as require that the most current information be provided as soil surveys are updated and reissued. New subsection (b)(1)(D) - (G) would provide the criteria from existing §312.10(b)(1) - (6) and §312.10(c) (pertaining to the items required to be included in the registration applications) so that information in this chapter for permit applications is together in one section. New subsection (b)(1)(H) would require that maps and lists related to adjacent landowners be included in multiple formats with applications for new registrations and major amendments, in order to facilitate public review of the application and the mailing of notices on the application by the commission's chief clerk. New subsection (b)(1)(I) and (J) would provide criteria for soil sampling for registrations that are the same as for permits. New subsection (b)(1)(K) would retain the requirement that four copies of all application information be submitted. New subsection (b)(2) would retain the requirements for providing written notice of certain changes for a site or registration.

New §312.12(c) would retain the review and approval of registrations (existing §312.12(b)) with minor changes for clarity. New subsection (d) would provide the requirement to send notice (rather than copies) of the decision on an application to all parties who submitted written information on the application (including public comments) when the decision is mailed to the applicant (existing §312.12(c)).

Section 312.13 - Actions and Notice

Section 312.13 is proposed to be amended to correct typographical errors and incorrect citations, reorganize the section for clarity, and to add new notice requirements. The amendment to subsection (a) would provide for clarity and to add "store" and "process" to the list of types of permits and registrations affected since the same actions pertain to those types of authorizations as well. The amendment to subsection (b) would group current provisions as subsection (b)(1) with corrections of outdated citations. The amendment to subsection (b)(2) would require that notice be provided to all landowners within one-half mile of disposal and incineration sites. The amendment to subsection (c)(1) would provide to apply the required public notice actions to all types of registrations; subsection (c)(1) would provide to limit the current exclusion for Class A sewage sludge to only Class A sewage sludge that has been approved for marketing and distribution because the commission believes that all types of registrations should be subject to public notice and input requirements (per new §312.4(b), no registration is required for sites using Class A sewage sludge that has been approved for marketing and distribution). The amendment to subsection (c)(3) would correct the name for public notices. The amendment to subsection (d) would clarify that "domestic septage" is part of the term "sewage sludge," to delete unnecessary verbiage, and to update a citation that is proposed to be renumbered. In subsection (e), the commission proposes to make the following changes: 1.) update the term "motion for reconsideration" to "motion to overturn"; 2.) update reference to the applicable rule for such motions; and 3.) clarify that the commission's public interest counsel and any other person can file motions, rather than just persons who are affected by the authorization of a site.

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 rulemaking is in effect, there will be significant fiscal implications for the agency from new Class B sewage sludge permit fees. The commission does not anticipate significant fiscal implications to other units of state and local government due to implementation of the proposed rules. Units of government will have to pay between $1,000 to $5,000 for a permit to land apply Class B sewage sludge on or after September 1, 2003. Units of state or local government that do not seek to obtain this permit would not be affected by the proposed rulemaking.

This rulemaking is intended to implement certain provisions of HB 2912 (an Act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Legislature, 2001. The bill requires any entity that land applies Class B sewage sludge to obtain a permit, rather than a registration, to continue operating. All existing sites operating under a registration that allows the land application of Class B sewage sludge must obtain a permit on or by September 1, 2003. Any new sites would be required to obtain a permit on or after September 1, 2003, depending on when the site commences operations. As part of the permit requirement, all affected sites could be subject to a contested case hearing, which could cost a permit applicant in excess of $30,000.

The bill requires the commission to charge a Class B sewage sludge permit application fee of between $1,000 to $5,000 for

each permit, depending on the amount of sludge to be land applied. The commission proposes the following fee schedule for each permit application: $1,000 if the amount of Class B sewage sludge to be applied annually is less than or equal to 2,000 dry tons; $2,000 if the amount of Class B sewage sludge to be applied annually is greater than 2,000 dry tons but less than or equal to 5,000 dry tons; $3,000 if the amount of Class B sewage sludge to be applied annually is greater than 5,000 dry tons but less than or equal to 10,000 dry tons; $4,000 if the amount of Class B sewage sludge to be applied annually is greater than 20,000 dry tons. The proposed rulemaking would allow the commission, upon written request, to refund 50% of the permit application fee if a permit is not issued.

In addition to the new permit fee, the commission would require site soil sampling in the sludge application area at a rate of at least one composite sample per each 80 acres. This provision is not anticipated to result in significant fiscal implications for units of state or local government that apply for Class B sewage sludge permits, because the amount of soil needed for the samples would be very small.

The commission estimates there are currently 200 sites operating under registrations to land apply Class B sewage sludge. An additional 75 sites are anticipated to apply for a registration or permit between now and September 1, 2003. The overall costs to units of state and local government due to the new permit fee is unknown, because the commission does not know how many of the existing or new sites are owned and operated by units of state or local government. The total costs to all entities that are required to obtain a permit by September 1, 2003 is estimated to range between $275,000 to $1,375,000 (not including hearing costs), depending on the amount of sludge to be land applied by each affected entity.

In order to carry out applicable provisions of HB 2912, the 77th Legislature appropriated to the commission an additional $122,700 in Fiscal Year 2002 and $96,270 in Fiscal Year 2003 out of the Waste Management Account Number 549. In addition, the commission was allotted one additional full time employee to assist in implementing these provisions of HB 2912.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be additional opportunities for public comment and contesting authorizations concerning the land application of Class B sewage sludge.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which requires any entity that land applies Class B sewage sludge to obtain a permit, rather than a registration, to continue operating. All existing sites operating under a registration that allows the land application of Class B sewage sludge must obtain a permit on or by September 1, 2003. Any new sites would be required to obtain a permit on or after September 1, 2003, depending on when the site commences operations. As part of the permit requirement, all affected sites could be subject to a contested case hearing, which could cost a permit applicant in excess of $30,000.

The bill requires the commission to charge a Class B sewage sludge permit application fee of between $1,000 to $5,000 for each permit, depending on the amount of sludge to be land applied. The proposed rulemaking would allow the commission, upon written request, to refund 50% of the permit application fee if a permit is not issued. Additionally, the commission would require site soil sampling in the sludge application area at a rate of at least one composite sample per each 80 acres. This provision is not anticipated to result in significant fiscal implications for individuals and businesses that apply for Class B sewage sludge permits, because the amount of soil needed for the samples would be very small.

The commission estimates there are currently 200 sites operating under registrations to land apply Class B sewage sludge. An additional 75 sites are anticipated to apply for a registration or permit between now and September 1, 2003. The commission does not anticipate significant fiscal implications to any one individual or business due to implementation of the proposed rulemaking. The total costs to all entities that are required to obtain a permit by September 1, 2003 is estimated to range between $275,000 to $1,375,000 (not including hearing costs), depending on the amount of sludge to be land applied by each affected entity.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, to small or micro-businesses as a result of implementing the proposed rulemaking, which is intended to implement provisions of HB 2912, 77th Legislature, 2001. This bill requires any entity that land applies Class B sewage sludge to obtain a permit, rather than a registration, to continue operating. All existing sites operating under a registration that allows the land application of Class B sewage sludge must obtain a permit on or by September 1, 2003. Any new sites would be required to obtain a permit on or after September 1, 2003, depending on when the site commences operations. As part of the permit requirement, all affected sites could be subject to a contested case hearing, which could cost a permit applicant in excess of $30,000.

The bill requires the commission to charge a Class B sewage sludge permit application fee of between $1,000 to $5,000 for each permit, depending on the amount of sludge to be land applied. The proposed rulemaking would allow the commission, upon written request, to refund 50% of the permit application fee is a permit is not issued. Additionally, the commission would require site soil sampling in the sludge application area at a rate of at least one composite sample per each 80 acres. This provision is not anticipated to result in significant fiscal implications for small and micro-businesses that apply for Class B sewage sludge permits, because the amount of soil needed for the samples would be very small.

The commission estimates there are currently 200 sites operating under registrations to land apply Class B sewage sludge, some of which are small or micro-businesses. An additional 75 sites are anticipated to apply for a registration or permit between now and September 1, 2003. The commission does not anticipate significant fiscal implications to any one small or micro-business due to implementation of the proposed rulemaking. The total costs to all entities that are required to obtain a permit by September 1, 2003 are estimated to range between $275,000 to $1,375,000 (not including hearing costs), depending on the amount of sludge to be land applied by each affected entity.

The following is an analysis of the costs per employee for small and micro-businesses that are seeking authority to land apply over 20,000 tons of Class B sewage sludge. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business would incur additional costs

(not including costs for hearings) of approximately $50 per employee to comply with the proposed rules. A micro-business would incur additional costs (not including costs for hearings) of approximately $250 per employee to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 this 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. "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. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking requires a responsible person to obtain a commission permit to apply Class B sewage sludge on a land application unit as required by THSC, §361.121. This rulemaking affects the same class of regulated entities, except the entities must obtain a permit as authorization instead of a registration. The commission shall no longer process and issue any registrations to authorize persons to land apply Class B sewage sludge. In addition, the proposal requires an applicant to pay a permit fee based on the amount of sludge to be applied. The proposed rules will require a sampling plan in the permit application when soil sampling is based on a method other than sampling separately each United States Department of Agriculture Natural Resource Conservation Service soil type (soils with the same characterization or texture). The sampling frequency will be one sample per 80 acres or less of each soil type in the application area and to allow alternate sampling methods to be used when described in detail in the sampling plan submitted with the application. The proposed rulemaking also includes minor administrative changes and corrections.

The proposed rulemaking does not meet the definition of a major environmental rule as defined in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission concludes that a regulatory analysis is not required in this instance because the proposed rules do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to ensure that the commission's regulations comply with new Class B sewage sludge permitting requirements. The proposed rulemaking requires a responsible person to obtain a commission permit to apply Class B sewage sludge on a land application unit as required by THSC, §361.121. The commission shall no longer process and issue any registrations to authorize persons to land apply Class B sewage sludge. The proposed rules will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding state law. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. Therefore, the proposed amendments to Chapter 291 are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 28, 2002 at 10:00 a.m., in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments 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 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. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-083-312-WT. For further information, please contact Joe Thomas, Policy and Regulations Division, at (512) 239-4580.

30 TAC §§312.4, 312.10 - 312.12

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which provides the commission with the general powers to carry out its duties under the TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeals implement TWC, §5.102, General Powers, and §5.103, Rules.

§312.4. Sewage Sludge Permit, Registration, or Notification Required.

§312.10. Permit and Registration Applications Processing.

§312.11. Permits.

§312.12. Registration of Land Application Activities.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202317
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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30 TAC §§312.4, 312.10 - 312.13

STATUTORY AUTHORITY

The amendment and new sections are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission; and the Texas Solid Waste Disposal Act, THSC, §361.011, which provides the commission with the authority to manage municipal waste, THSC, §361.013, which provides the commission with the authority to adopt rules and establish fees for the transportation and disposal of solid waste, THSC, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge such as reuse, THSC, §361.024, which provides the commission authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste, THSC, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste, and THSC, §361.121, which provides the commission the authority to require a permit for the land application of Class B sewage sludge and charge a fee for the permit.

The proposed amendment and new sections implement HB 2912, §9.05, 77th Legislature, 2001.

§312.4. Requirements for Sewage Sludge Permit, Registration, or Notification.

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, or disposal of sewage sludge, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Sludge at Beneficial Use Sites), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of sewage sludge shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued pursuant to other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) Effective September 1, 2003 a permit is required for the beneficial land application of Class B sewage sludge. All provisions for this activity in any registration are void after August 31, 2003.

(2) The effective date of a permit is the date that the executive director signs the permit.

(3) Site permit information on file with the commission shall be confirmed or updated, in writing, whenever the mailing address, telephone number of the owner or operator is changed, or whenever requested by the commission.

(4) If a permit is required under this chapter, all activities at the site under this chapter, except transportation, shall be incorporated in the permit.

(b) Notification of certain Class A sewage sludge land application activities.

(1) If sewage sludge meets the metal concentration limits in §312.43(b)(3) (Table 3) of this title (relating to Metal Limits), the Class A pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registration of Land Application Activities), and §312.13 of this title (relating to Actions and Notices), except as provided in this subsection.

(2) At least 30 days prior to engaging in such activity for the first time, any generator in Texas or any person who first conveys sewage sludge from out of state into the State of Texas and who proposes to store, land apply, or market and distribute sewage sludge meeting the standards of this subsection shall submit a notification form approved by the executive director. A completed notification shall be submitted to the Agriculture Team of the Water Quality Division by certified mail, return receipt requested. The notification shall contain information detailing:

(A) sewage sludge composition, all points of generation, and wastewater treatment facility identification;

(B) name, address, and telephone number of all persons who are being proposed to receive the sewage sludge directly from the generator;

(C) a description in a marketing and distribution plan which describes any activities:

(i) to sell or give away sewage sludge directly to the public, including a general description of the types of end uses proposed by persons who will be receiving the sewage sludge;

(ii) methods of distribution, marketing, handling, and transportation of the sewage sludge;

(iii) a reasonable estimate of the expected quantity of sewage sludge to be generated or handled by the person making the notification; and

(iv) a description of any proposed storage and the methods which will be employed to prevent surface water runoff of the sewage sludge or contamination of groundwater.

(3) Thirty days after the notification has occurred, the activities regulated by this subsection may commence unless the executive director determines that the activities do not meet the requirements of this subsection or an applicant's permit. After receiving a notification, the executive director may review a generator's activities or the activities of the person conveying the sewage sludge into Texas to determine whether any or all of the requirements of this chapter are necessary. In making this determination, the executive director will consider specific circumstances related to handling procedures, site conditions, or the application rate of the sewage sludge. The executive director may review a proposal for storage of sewage sludge, considering the amount of time and the amount of material described on the notification. Also, in accordance with §312.41 of this title (relating to Applicability), any reasonably anticipated adverse effect that may occur due to a metal pollutant in the sewage sludge may also be considered.

(4) Annually, on September 1, each person subject to notification of certain Class A activities required by this subsection shall provide a report to the commission, which shows in detail all activities described in paragraph (2) of this subsection that occurred in the reporting period. The report shall include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report shall also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out of state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) If the requirements in Subchapter B of this chapter (relating to Land Application for Beneficial Use) are met and a sewage sludge does not meet the requirements of subsection (b) of this section, a site shall be registered for the land application of sewage sludge for beneficial use, in accordance with the requirements of §312.12 and §312.13 of this title unless a permit is issued under §312.11 of this title.

(2) Registrations for the use of Class B sewage sludge shall expire on or before August 31, 2003. If the registration is scheduled to expire after August 31, 2003, and authorizes the use of Class A sewage sludge, domestic septage or water treatment plant sludge, only the provisions for the use of Class B sewage sludge shall expire on August 31, 2003; the other provisions shall expire on the expiration date of the registration or when a permit is issued for the site.

(3) Upon the effective date of these rules:

(A) the executive director shall not accept registration applications for land application of Class B sewage sludge;

(B) only permit applications will be accepted; and

(C) for pending registration applications, the executive director shall process either the pending registration application or a permit application (if submitted) for the same site, but not both.

(4) The effective date for the registration of a site at which sewage sludge is applied to the land for beneficial use is the date that the executive director signs the registration, in accordance with §312.12(d) of this title. Site registration information on file with the commission shall be confirmed or updated, in writing, whenever:

(A) the mailing address and/or telephone number of the owner or operator is changed; or

(B) requested by the executive director.

(d) Term limits. Term Limits for registrations or permits shall not exceed five years.

(e) Authorization. No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge unless such activity has received the prior written authorization of the commission.

(f) Permit application fees for Class B sewage sludge.

(1) Any person who applies for a permit, permit renewal, permit modification, permit amendment, or permit transfer shall remit a permit application fee. The fees in this subsection supercede the fees in §305.53 of this title (relating to Application Fee). The commission shall not consider an application for final decision until such time as the permit application fee is paid. All permit application fees must be made payable to the Texas Commission on Environmental Quality (effective September 1, 2002) and paid at the time the application for a permit is submitted.

(2) The executive director shall not process an application until all delinquent annual fees and delinquent administrative penalties owed the commission by the applicant or for the site as named in the permit application are paid in full. Any permittee to whom a permit is transferred shall be liable for payment of the annual fees assessed for the permitted entity/site on the same basis as the transferor of the permit, as well as any outstanding fees and associated penalties owed the commission. If the applicant is not the permittee at the time fees become delinquent or against whom administrative penalties are assessed, the executive director may for good cause waive the applicant's obligation under this section for payment of delinquent annual fees or delinquent administrative penalties.

(3) An applicant may file a written request for a refund in the amount of 50% of the permit application fee paid if the permit is not issued. No fees shall be refunded after a permit, permit renewal, permit modification, permit amendment, or permit transfer has been issued by the commission. Transfer of a permit shall not entitle the transferor permittee to a refund, in whole or part, of any fee already paid by that permittee.

(4) The permit application fees shall be between $1,000 and $5,000, based on the quantity of sewage sludge to be applied annually under the permit, as shown in the following schedule:

(A) $1,000 if the quantity is 2,000 dry tons or less;

(B) $2,000 if the quantity is greater than 2,000 dry tons but less than or equal to 5,000 dry tons;

(C) $3,000 if the quantity is greater than 5,000 dry tons but less than or equal to 10,000 dry tons;

(D) $4,000 if the quantity is greater than 10,000 dry tons but less than or equal to 20,000 dry tons; or

(E) $5,000 if the quantity is greater than 20,000 dry tons.

§312.10. Permit and Registration Applications Processing.

(a) Applications for permits, registrations, or other types of approvals required by this subchapter shall be reviewed by staff for administrative completeness within 14 calendar days of receipt of the application by the executive director.

(b) Permit and registration applications must include all required information shown in §312.11 of this title (relating to Permits),

§312.12 of this title (relating to Registration of Land Application Activities), or §312.142 of this title (relating to Transporter Registrations).

(c) Upon receipt of an application for a permit or registration, not to include transportation registrations, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing, and forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application as described in §312.13 of this title (relating to Actions and Notice).

(d) The notice of receipt of an application for permit or registration and declaration of administrative completeness shall contain the information in Chapter 39 of this title (relating to Public Notice.

(e) Nothing in this section shall be construed so as to waive the notice and processing requirements concerning the application and the draft permit in accordance with Chapter 39, Subchapters H and J of this title (relating to Public Notice), Chapter 50, Subchapters E - G of this title (relating to Action on Applications and Other Authorizations), Chapter 55, Subchapters D - F of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), or Chapter 305, Subchapters C, D, and F of this title (relating to Consolidated Permits) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit for sewage sludge land application, processing, disposal, storage, or incineration is subject to the application processing procedures and requirements found in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical Review; Extensions; Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; Referral to Commission; Application Amendment; and Effect of Rules).

(g) Any person who is required to obtain a registration, or who requests an amendment, modification or renewal of a registration to land apply sewage sludge (including domestic septage) is subject to the application processing procedures and requirements found in §§281.18 - 281.20 of this title. If a permit application for land application of Class B sewage sludge is filed for a site holding a current registration before the expiration of the registration, the registration will remain in effect until either the permit is issued or denied, or until August 31, 2003, whichever occurs first.

(h) The registration for land application of sewage sludge shall be cancelled upon receipt of a written request for cancellation from either the site operator or landowner. The executive director will provide notice to the other party that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the commission and is not mandatory for cancellation.

(i) In order to transfer a registration or permit for land application of sewage sludge, both the site operator and the landowner must sign the transfer application. An application for transfer that is not signed by both the site operator and the landowner will be considered a request for cancellation.

(j) If a registration or permit for a site is cancelled, a complete application for registration or permit must be submitted in order to authorize the site. If the application is approved, the site will be authorized under the same site registration or permit number.

(k) For permits, a major amendment is defined in Chapter 305, Subchapter D of this title. For purposes of this chapter concerning registrations and except as provided in subsection (l) of this section, a major amendment for a registration is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit or registration or a substantive change in the information provided in an application for registration or permit, regarding sewage sludge. Changes to registrations which are not considered major include, but are not limited to, typographical errors, changes which result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the executive director will process as a minor amendment a request by an existing permittee or registrant to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration which implemented prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title are not applicable to a minor amendment for a registration.

§312.11. Permits.

(a) The provisions of this section set the standards and requirements for permit applications to land apply, process, store, dispose of, or incinerate sewage sludge.

(b) Any person who is required to obtain or who requests a new permit or an amendment, modification, or renewal of a permit under this section is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data). For a land application permit, the applicant must be:

(1) the owner of the application site if the sludge was generated outside this state; or

(2) the site operator if the sludge was generated in this state.

(c) An application for a permit must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Application Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit), and must also include the following.

(1) for an incineration or disposal facility, the map required by §305.45(a)(6) of this title shall provide the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land within one-half mile of any portion of the tract of land where the permitted activities would occur, as such information can be determined from the current county tax rolls or other reliable sources;

(C) the source(s) of the information on the surrounding property owners; and

(D) the list of property owners must be provided both as a hard copy, either on the map or as an attached list, and in one of the following manners:

(i) in electronic format; or

(ii) on four sets of self-adhesive mailing labels for all property owners;

(2) for beneficial use land application, processing, or storage facility, the map required by §305.45(a)(6) of this title must provide the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources;

(C) the source(s) of the information on the surrounding property owners; and

(D) the list of property owners in both a hard copy, either on the map or as an attached list, and in one of the following manners:

(i) in electronic format; or

(ii) on four sets of self-adhesive mailing labels for all property owners;

(3) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity; and

(4) any information provided under this subsection must be submitted in quadruplicate form.

(d) An applicant for a permit to land apply Class B sewage sludge must also provide the following information:

(1) the information listed in §312.12(b)(1)(A) - (C) of this title (relating to Land Application Activities);

(2) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(A) the samples must be taken from the zero to six inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample must be taken from each United States Department of Agriculture (USDA) Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(E) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(F) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(3) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(A) separate samples must be taken from the zero to six inch and from the six to 24 inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(E) alternate methods for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(F) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(4) information necessary to identify the hydrologic characteristics of the surface water and groundwater within one-quarter mile of the site to be permitted; and

(5) any information under this subsection shall be submitted in quadruplicate form.

(e) Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126(d) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(f) If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information shall be provided orally or by facsimile transmission (fax) to the appropriate Regional Office within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information shall also be provided by the permit holder to the Regional Office and to the Enforcement Division at the commission's Central Office (MC 149) within five working days of becoming aware of the noncompliance. The written submission must contain the following information:

(1) a description of the noncompliance and its cause;

(2) the potential danger to human health, safety, or the environment;

(3) the period of noncompliance, including exact dates and times;

(4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(g) Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.

(h) Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), §305.64 of this title (related to Transfer of Permits), §305.65 of this title (relating to Corrections of Permits), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension). The permittee shall have the continuing obligation to provide immediate written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and to provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods. Information submitted under this subsection shall be in quadruplicate form.

§312.12. Registration of Land Application Activities.

(a) After August 31, 2003, all registrations for the beneficial use of Class B sewage sludge will be void. Registrations for the beneficial use of Class A sewage sludge, water treatment plant sludge, and/or domestic septage will remain valid until they expire, are renewed, are cancelled, or are revoked.

(b) Except as provided in §312.4(b) of this title (relating to Requirements for Sewage Sludge Permit, Registration, or Notification) and §312.11 of this title (relating to Permits), any person who intends to land apply sewage sludge for beneficial use shall:

(1) submit to the executive director an original, completed application form approved by the executive director, along with the appropriate number of copies of the registration application. Each applicant shall submit to the executive director such information as may reasonably be required to enable the executive director to determine whether such land application for beneficial use activities are compliant with the terms of this chapter. Such information may include, but is not limited to the following:

(A) a description and composition of the sewage sludge;

(B) a description of all processes generating the sewage sludge (including domestic septage) to be applied at the site;

(C) information about the site and the planned management of the sewage sludge, including the name, address, and telephone number of any landowner or operator at the site and the following information:

(i) whether such material is managed on-site and/or off-site from its point of generation;

(ii) a description of each on-site land application beneficial use unit or tract, including the name, address, and telephone number of all landowners, or the same information from a landowner acting as a spokesperson(s) for all the landowners, so long as the spokesperson submits to the executive director a sworn statement allowing the spokesperson to act for other persons;

(iii) a listing of the types of sewage sludge managed in each unit or tract;

(iv) a detailed description of the beneficial use occurring at each unit or tract of land where application of sewage sludge is proposed, including proposed waste management and crop production methods; and

(v) information regarding soil characteristics and subsurface conditions where the land application site will be located;

(D) the verified legal status of the applicant(s), as applicable;

(E) the notarized signature of each applicant, checked against commission requirements in accordance with §305.44 of this title (relating to Signatories to Applications);

(F) a notarized affidavit from the applicant(s) verifying land ownership or landowner agreement to the proposed activity;

(G) technical reports and supporting data required by the application;

(H) for applications for major amendments or new registrations, information concerning surrounding landowners, including the following:

(i) a map depicting the approximate boundaries of the tract of land owned or under the control of the applicant and each residential or business address and owner of all the tracts of land bordering the perimeter of any portion of the site;

(ii) a list on or attached to the map of the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls and other reliable sources;

(iii) the source of the information; and

(iv) the list of property owners in both a hard copy and in one of the following manners:

(I) in electronic format; or

(II) on four sets of self-adhesive mailing labels for all property owners;

(I) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(i) the samples must be taken from the zero to six inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(v) an alternate methods for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(vi) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each

USDA Natural Resource Conservation Service soil type in each area sampled;

(J) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(i) separate samples must be taken from the zero to six inch and from the six to 24 inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples shall be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(v) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(vi) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(K) any information provided under this paragraph must be submitted to the executive director in quadruplicate form.

(2) Registrants have the continuing obligation to immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning changes in land ownership, changes in site control, or operator, changes in waste composition, changes in the source of sewage sludge, or waste management methods, and information regarding soils and subsurface conditions where the operation is to be located. Any information provided under this paragraph shall be submitted to the executive director in duplicate form.

(c) The executive director shall determine, after review of any application for registration to land apply sewage sludge (including domestic septage) for beneficial use, whether to approve or deny an application in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application, the executive director will consider all relevant requirements of this chapter and consider all information pertaining to those requirements received by the executive director regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

(d) At the same time the executive director's decision is mailed to the applicant, notice of this decision shall also be mailed to all parties who submitted written information on the application, as described in §312.13(c)(2) and (3) of this title (relating to Actions and Notice).

§312.13. Actions and Notice.

(a) Applicability. This section sets forth the manner in which action will be taken on applications filed with the executive director for either a permit or a registration to land apply, store, process, dispose of, or incinerate sewage sludge [~~filed with the commission~~].

(b) Permit actions. [~~Any application for a permit to dispose of or incinerate sewage sludge is subject to the standards and requirements for actions concerning amendments, modifications, transfers, and renewals of permits, as set forth in §305.92 of this title (relating to Action on Applications), §305.93(a) of this title (relating to Action on Applications for Permit), §305.95 of this title (relating to Action on Applications for Renewal), §305.96 of this title (relating to Action on Applications for Amendment or Modification), §305.97 of this title (relating to Action on Application for Transfer), §305.98 of this title (relating to Scope of Proceedings), §305.99 of this title (relating to Commission Action), §305.100 of this title (relating to Notice of Application), §305.101 of this title (relating to Notice of Hearing), §305.102 of this title (relating to Notice by Publication), §305.103 of this title (relating to Notice by Mail), §305.105 of this title (relating to Request for Public Hearing), and §305.106 of this title (relating to Response to Comments).~~]

(1) All permit applications are subject to the standards and requirements as set forth in Chapter 39 of this title, Subchapters H - J (relating to Public Notice), Chapter 50 of this title, Subchapters E - G (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title, Subchapters D - F (relating to Requests for Reconsideration and Contested Case Hearings; Public Notice).

(2) For disposal and incineration permit applications, notice shall be provided pursuant to Chapter 39 of this title to all owners of properties within one-half mile of the border of any portion of the tract of land where the permitted activities would occur. For beneficial use, processing, and storage permit applications, notice shall be provided pursuant to Chapter 39 of this title to all owners of properties adjacent to any portion of the tract of land where the permitted activities will occur. The tract of land includes all contiguous properties under the ownership or control of the applicant.

(c) Registration actions.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment of a registration for land application of [~~Class B~~] sewage sludge (including domestic septage). The requirements of this subsection do not apply to sites where only Class A sewage sludge that has been authorized for marketing and distribution is to be land applied for [~~a~~] beneficial use.

(2) The chief clerk of the commission shall mail Notice of Receipt of Application and Declaration of Administrative Completeness along with a copy of the registration application, to the county judge in the county where the proposed site for land application of sewage sludge (including domestic septage) is to be located.

(3) The chief clerk of the commission shall mail Notice of Receipt of Application and Declaration of Administrative Completeness [~~notice of Receipt of Application and Administrative Completeness~~] to the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(4) (No change.)

(5) Any application for a registration to beneficially use sewage sludge (including domestic septage) is subject to the standards and requirements for actions concerning amendments, modifications, transfers and renewals of registrations, as set forth in Chapter 50, Subchapter G of this title.

(d) Public comment on registrations. A person may provide the commission with written comments on any new or major amendment applications to register a site for land application of sewage sludge (including domestic septage). The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for registration, pursuant to §312.12(c) [~~§312.12(b)~~] of this title (relating to Registration of Land Application Activities).

(e) Motion to overturn [~~for reconsideration~~]. The applicant, public interest counsel, or other person [~~or a person affected~~] may file with the chief clerk a motion to overturn [~~for reconsideration~~], under §50.139 [~~§50.39(b) - (f)~~] of this title (relating to Motion to Overturn [~~Motion for Reconsideration~~]), to overturn [~~of~~] the executive director's final approval or denial of an application.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202318
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-6087

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CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

The Texas Natural Resource Conservation Commission (commission) proposes new §§328.2 - 328.5; and the commission also proposes an amendment to §328.8.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement the requirements of House Bill (HB) 2912, Article 9, §9.03, 77th Legislature, 2001. House Bill 2912 became effective on September 1, 2001. House Bill 2912 amends Texas Health and Safety Code (THSC) by adding §361.119, which directs the commission to adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that recyclable material is reused and not abandoned or disposed of, and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. Corresponding changes to 30 TAC Chapter 330, Municipal Solid Waste, and 30 TAC Chapter 332, Composting, are published in the Proposed Rules section of this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The proposed changes to Chapter 328 would add sections and language critical to justifying a recycling facility's exemption from registration and permit requirements under Chapter 330. The proposed amendments would add four new sections to Subchapter A and require a change in the title of Subchapter A to reflect that the subchapter contains general information in addition to the subchapter's purpose. Also, the title to Subchapter B is proposed to be changed to indicate that the subchapter addresses recycling goals and rates.

Proposed new §328.2, Definitions, would add three new definitions critical to the proposed rules on limitations on storage and reporting and recordkeeping requirements. Paragraph (1) would define the term "Affiliated with" that is used, but not defined, in the legislation that created THSC, §361.119, leading to this proposed rule. Staff borrowed from and adapted definitions for "substantial interest" from Texas Government Code, §572.005; "affiliate" from the Texas Business and Commerce Code, §24.002(1); and "affiliated shareholder" from the Texas Business Corporation Act, Article 13.02, while using the criterion of 20% interest for affiliation found in the Texas Business and Commerce Code, §24.002(1); Texas Business Corporation Act, Article 13.02; THSC, §361.089(g); and Texas Water Code (TWC), §7.301(2). The term "Affiliated with" is used in two contexts in the proposed rules: in setting a standard for an exemption to the recordkeeping and reporting requirements for facilities affiliated with a person or facility holding a permit to dispose of municipal solid waste; and in preventing a facility from using its affiliation with a hauler to circumvent the recordkeeping and reporting requirements and the limitations on material storage and accumulation. Paragraph (1)(A) and (B) would clarify that affiliation by ownership or control can be established in either of two ways. Paragraph (2) would define the term "Processed for recycling" to distinguish material that has been processed at a facility to make it amenable for recycling from unprocessed material when applying the rule's limitation on material storage and accumulation. Paragraph (3) would define the term "Source-separated recyclable material" consistent with the definition of "source-separated organic material" in Chapter 332, to distinguish such material from municipal solid waste, which must be taken to a registered or permitted municipal solid waste facility rather than to an exempt recycling facility.

Proposed new §328.3, General Requirements, would consolidate general requirements for recycling facilities exempt from registering and permitting under proposed §330.4(f)(1)(B), relating to Permit Required. The general requirements have been duplicated, with minor grammatical editing, from §332.4, to stress that all recycling facilities exempt from permit and registration requirements under Chapter 330, are subject to basic regulations that protect the environment and human health and safety. The proposed introductory paragraph clarifies that §328.3 specifically applies to recycling operations exempt from registration and permitting under proposed §330.4(f)(1)(B). Paragraph (1) would require all recycling facilities to comply with the TWC prohibition on the discharge of material to or the pollution of surface water or groundwater. Paragraph (2) would prohibit all recycling facilities from creating a nuisance as defined in Chapter 330 and as prohibited under the authority of the Solid Waste Disposal Act; Texas Clean Air Act; TWC, Chapter 26; and the general air quality rules of the commission. Paragraph (3) would emphasize the prohibition on discharging pollutants to surface water or groundwater as the result of recycling activities. Paragraph (4) would require that all recycling facilities comply with all applicable federal laws and regulations. Paragraph (5) would require that all recycling facilities comply with all applicable state laws and regulations. Paragraph (6) would require facility operations to be conducted in a manner that does not endanger human health and welfare, or the environment. Paragraph (7) would prohibit recycling activities from being conducted within the permitted boundaries of a municipal solid waste landfill without prior approval by the executive director as required by 30 TAC §305.70, relating to Municipal Solid Waste Permit and Registration Modifications. Paragraph (8) would require that recycling operations be conducted

in a manner to ensure that no unauthorized or prohibited materials are processed at the facility and that any unauthorized or prohibited materials be disposed of at an authorized facility in a timely manner. Paragraph (9) would require that all hazardous wastes and nonhazardous industrial solid wastes be managed in accordance with the industrial solid waste and municipal hazardous waste rules of the commission. Paragraph (10) would require the operator of a recycling facility to address the release of a chemical of concern according to the requirements of the Texas Risk Reduction Program and to perform the appropriate corrective action for that release.

Proposed new §328.4(a) establishes to whom the section is applicable. Composting facilities that require notification under Chapter 332 have been included to establish that the overall requirements for exempt-tier composting facilities under Chapter 332 not be more stringent than those for notification-tier composting facilities under Chapter 332.

Proposed new §328.4(a)(1) and (2) would establish which facilities are exempt from limitations on the storage and accumulation of recyclable material, as specified in the legislation. Proposed §328.4(a)(1) would exempt a facility owned or operated by a local government from the requirements of the section. Texas Health and Safety Code, §361.119(e) reads "A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section." The commission has interpreted the legislative intent to be that recycling facilities, not solid waste processing facilities, owned and operated by a local government be exempt from the requirements of the new rules, inasmuch as all solid waste processing facilities are required to be permitted or registered under Chapter 330.

The language in proposed §328.4(a)(2) reflects the statutory exemption of recycling facilities whose "primary function . . . is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use...." The proposed rule language would create a practical standard for this exemption by limiting it to facilities that receive more than 50% of their recyclable materials directly from the public and/or from haulers not affiliated with the facility, receive no financial compensation to accept any of the recyclable material they receive, and show that material is potentially recyclable and has an economically feasible means of being recycled. Illegitimate recyclers typically charge tipping fees to accept materials, retaining most of these as profits with no further effort. (It should be noted that many legitimate recyclers and composters charge tipping fees to accept recyclable materials. It is not the intent of the legislation nor the proposed rules to restrict these operations; only to require that they further demonstrate their qualification for exemption from municipal solid waste registration and permitting requirements.) Stakeholders pointed out that an unscrupulous facility could circumvent the rule by imposing hauling charges in lieu of tipping fees. The proposed language requiring a facility to show that the material is potentially recyclable and has an economically feasible means of being recycled is meant to provide assurance that a facility actually demonstrates, as the statute requires, that the primary function of the facility is to process materials that have a resale value greater than the costs of processing the materials for subsequent beneficial use. To provide this assurance, a recycler must be able to reasonably demonstrate that there is or will be a market for a recycled/recyclable material.

Proposed new §328.4(b) specifies the conditions under which recyclable material may be accumulated or stored at a facility. Its language derives from 30 TAC §335.17, relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials, which includes a prohibition against speculative accumulation of materials. In addition to the language borrowed from §335.17, proposed new §328.4(b)(2)(B) would establish that if a material has been "processed for recycling" (see definition in proposed §328.2) and is managed as a commodity to be sold for recycling, it is not considered to be accumulated material for the purposes of the section.

Proposed new §328.4(c) would allow the agency to require a non-complier to obtain a municipal solid waste registration or a permit. This is left to the discretion of the executive director to allow flexibility for legitimate recycling facilities that receive massive amounts of materials resulting from natural disasters, or that may have recycled or processed for recycling less than 75% of their materials in a particular calendar year due to other unavoidable circumstances. Again, the intent of the legislation is understood to be to prevent illegitimate recycling operations, not to force legitimate recyclers to comply with registration or permit requirements from which they should be exempt.

Proposed new §328.5, Reporting and Recordkeeping Requirements, fulfills the statutory requirement in THSC, §361.119 that the commission "adopt rules, including recordkeeping and reporting requirements ...." Section 328.5(a) states that the section applies to recycling facilities and operations that are exempt from registration and permitting under §330.4(f)(1)(B) and (C), and notification-tier compost facilities. Paragraphs (1) - (3) would specify the exemptions provided by the legislation. Paragraphs (1) and (2) provide exemptions identical to those in proposed new §328.4, for the same reasons discussed previously in this preamble. Proposed new subsection (a)(3) would exempt "A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste," as directed by THSC, §361.119.

Section 328.5(b) would cover information to be included in the facility's report to the commission. Additional reports are required only if information submitted on a previous report has changed. The commission anticipates that the report will consist of two parts: the Core Data Form and an explanation of how and what materials will be stored and processed. Section 328.5(c) requires recordkeeping necessary to demonstrate compliance with the limitations on storage of materials in §328.4, and to demonstrate reasonable efforts to maintain source-separation and limit non- recyclable waste to incidental amounts. At the request of stakeholders, language was added that requires facilities to make these records available to local governments. The statutory authority for this proposed provision is in THSC, §361.032(b), relating to Inspections: Right of Entry.

The proposed amendment to §328.8 would change only the title, since the title proposed to be deleted is the title of proposed new §328.5. The proposed new title more accurately describes the contents of §328.8.

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 rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state and local government due to implementation of the proposed rules. Units of local government would be exempt from the recordkeeping, reporting,

and storage limitation requirements; however, units of state government would have to comply with these requirements.

These proposed rules are intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. This bill requires the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. In order to comply with this requirement, the commission proposes to restate existing recycling facility requirements (that currently appear in different statutes and rules) in one place, and add new definitions relating to permit exemptions, recycling processes, and source-separated recyclable material. The commission also proposes to implement recordkeeping, reporting, and storage limitation requirements. These proposed rules are intended to more clearly define the type of materials and processes associated with recycling, and to implement procedures to ensure that facilities authorized as recycling facilities are not storing materials on-site for periods of time unsafe to public health or the environment.

The proposed rules would affect all recycling facilities statewide that are not registered or permitted under Chapter 332 or part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain composting facilities. The commission estimates that approximately a minimum of 1,000 recycling and 134 composting facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation. The commission estimates that the number of recycling facilities owned or operated by units of state government will be very low. Currently, the commission has no records of any units of state government operating recycling facilities that would be affected by the proposed rules.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from permitting and registration under Chapters 330 and 332, and are not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules would require new or existing recycling facilities claiming exemption from municipal solid waste registration and permitting to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The new storage limitation provision would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration and permitting and not excluded under this legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration and permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit. The commission is not aware of any existing facilities owned and operated by units of state government that would be affected by the storage limitation requirement. The commission anticipates that any new facilities that commence operations following the adoption of the proposed rules would integrate the new storage limitation requirements into the overall operations of their sites. Therefore, the commission does not anticipate significant fiscal implications for units of state government due to implementation of the storage limitation requirement.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years that the proposed rules are in effect, the public would benefit from increased compliance with commission regulations and potentially increased environmental protection due to the new standards for exempt recycling facilities.

These proposed rules are intended to implement certain provisions of HB 2912, which require the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rules would affect all recycling facilities statewide that are not registered or permitted under Chapter 332 or part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain composting facilities. The commission estimates that approximately 1,000 recycling and 134 composting facilities would be affected.

Facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste registration and permitting, and are not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules would require recycling facilities claiming exemption from registration and permitting to submit an initial report to the executive director that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate that the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The proposed rules would implement a new storage limitation provision that would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration and permitting and not excluded under this legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration and permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that existing facilities would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit. However, it is estimated that the number of affected facilities requiring major changes to operations would not be large because the majority of recycling facilities currently meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be recycling materials but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rules could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates that it would cost from $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range from $35,000 to $250,000, depending on the type and location of the site, and the types of materials to be stored on- site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small and micro- businesses due to implementation of the proposed rules. These proposed rules are intended to implement certain provisions of HB 2912, which require the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rules would affect all recycling facilities statewide that are not already part of a permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain composting facilities. The commission estimates that approximately 1,000 recycling and 134 composting facilities would be affected, many of which are small or micro-businesses.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste registration and permitting, and are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules would require recycling facilities claiming exemption from municipal solid waste registration and permitting to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate that the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The proposed rules would implement a new storage limitation provision that would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration and permitting and not excluded under the legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration and permitting. Affected facilities that do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that small and micro-businesses would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit or registration. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of recycling facilities currently meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be recycling materials but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rules could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates that it would cost between $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range from $35,000 to $250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related

to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

The following is an analysis of the costs per employee for small and micro-businesses that are required to obtain a municipal solid waste permit to comply with the proposed rules. Small and micro- businesses are defined as having fewer than 100 or 20 employees respectively. A small business may pay an additional $2,500 per employee to comply with the proposed rules. A micro-business may pay an additional $12,500 per employee to comply with the proposed rules. The overall costs to small or micro-businesses could be higher if affected facilities are required to conduct site changes to comply with permit requirements.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed these proposed rules 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 proposed rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the proposed rules is to protect the environment or reduce risks to human health from environmental exposure, the proposed rules will not have an adverse material impact on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed new sections and amendments to Chapter 328 are intended to identify and affect only those facilities improperly disposing of municipal solid waste without an authorization, and therefore, do not meet the definition of a major environmental rule. These proposed rules do not meet any of the four applicability requirements listed in §2001.0225(a). These proposed rules do not exceed any standard set by federal law for distinguishing facilities improperly disposing of municipal solid waste from legitimate recycling facilities, and these rules are specifically required by state law under THSC, §361.119. These proposed rules do not exceed the requirements of state law under THSC, §361.119, and the proposed rules are not required by federal law. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program to distinguish facilities improperly disposing of municipal solid waste without authorization from legitimate recycling facilities. These rules are not proposed solely under the general powers of the agency, but rather specifically under THSC, §361.119, as well as the other general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public or private nuisance, which is exempt under Texas Government Code, §2007.003(b)(6). Specifically, the statutory basis for these proposed rules, THSC, §361.119, directs the commission to develop these proposed rules to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility, and to ensure that recyclable material is reused and not abandoned or disposed of and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. Garbage or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons is a public health nuisance by law under THSC, §341.011(5). A facility that operates without appropriate controls can become a private nuisance. The recordkeeping and reporting requirements in these proposed rules attempt to identify municipal solid waste facilities operating unregulated as recycling facilities and require that they obtain the proper authorization with regulatory controls.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to ensure that recyclable material is reused and not abandoned or improperly disposed of, and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The proposed rules would substantially advance the stated purpose by requiring recordkeeping and reporting and imposing limitations on the storage of recyclable material. The records required to be kept and reports required to be filed will assist agency enforcement staff to easily distinguish legitimate recycling facilities from municipal solid waste facilities operating without proper authorization.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules 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, or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these proposed rules do not prevent property owners from operating legitimate recycling facilities, which reuse or recycle materials and thus legitimately protect the environment and public health and safety by reducing the volume of the municipal solid waste stream.

There are no burdens imposed on private real property, and the benefits to society are facilities properly and legitimately recycling materials and reducing the volume of the municipal solid waste stream and facilities properly and legitimately processing municipal solid waste with appropriate environmental and health and safety controls.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination for the proposed rules in accordance with 31 TAC §505.22, and has found that the proposed rules are consistent with the applicable Texas Coastal Management Program (CMP) goals and policies.

The proposed rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas (CNRAs). The proposed rules do not govern any of the activities that are within the designated coastal zone management area or otherwise specifically identified under the Texas Coastal Management Act or related rules of the Coastal Coordination Council. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-081-328-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. PURPOSE AND GENERAL INFORMATION

30 TAC §§328.2 - 328.5

STATUTORY AUTHORITY

The new sections are proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017 and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed new sections are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed new sections implement THSC, §361.119; §361.032, which provides the commission and local governments with right of entry to inspect facilities and investigate conditions concerning solid waste management and control; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§328.2. Definitions.

The following terms, when used in this subchapter, shall have the following meanings. Other definitions may be found in Chapters 3, 330, and 332 of this title (relating to Definitions; Municipal Solid Waste; and Composting).

(1) Affiliated with - A person, "A," is affiliated with another person, "B," if either of the following two conditions applies:

(A) "A" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "B"; or

(B) "B" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "A."

(2) Processed for recycling - Material has been or is processed for recycling if it has been subjected to activities including extraction or separation of component materials (such as the separation of commingled recyclable materials), cleaning, grinding, or other preparation at a recycling facility to make it amenable for subsequent recycling.

(3) Source-separated recyclable material - Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) damage to source-separated recyclable material during collection, unloading, and sorting of that material, such as breakage of recyclable glass, that renders the material unmarketable; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles; and

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings.

§328.3. General Requirements.

Recycling facilities exempt from the permit and registration requirements under §330.4(f)(1)(B) of this title (relating to Permit Required) shall comply with all of the following general requirements. Violations of these requirements are subject to enforcement by the commission and may result in the assessment of civil or administrative penalties under Texas Water Code (TWC), Chapter 7 (relating to Enforcement).

(1) Compliance with TWC. The activities that are subject to this chapter shall be conducted in a manner that prevents the discharge of material to or the pollution of surface water or groundwater in accordance with the provisions of TWC, Chapter 26 (relating to Water Quality Control).

(2) Nuisance conditions. The handling and processing of recyclable material shall be conducted in a sanitary manner that shall prevent the creation of nuisance conditions as defined in §330.2 of this title (relating to Definitions) and as prohibited by Texas Health and Safety Code, Chapters 341 and 382 (relating to Minimum Standards of Sanitation and Health Protection Measures; and Clean Air Act); TWC, Chapter 26; §101.4 of this title (relating to Nuisance); and any other applicable regulations or statutes.

(3) Discharge to surface water or groundwater. The discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material is prohibited.

(4) Compliance with federal laws. Facility operations shall be conducted in accordance with all applicable federal laws and regulations.

(5) Compliance with state laws. Facility operations shall be conducted in accordance with all applicable laws and regulations of the State of Texas.

(6) Facility operations. Facility operations shall not be conducted in a manner that causes endangerment of human health and welfare, or the environment.

(7) Operations at a municipal solid waste landfill. No recycling activities shall be conducted within the permitted boundaries of a municipal solid waste landfill without prior approval by the executive director as required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(8) Operational requirement. Operations shall be conducted in a manner to ensure that no unauthorized or prohibited materials are processed at the facility. All unauthorized or prohibited materials received by the facility shall be disposed of at an authorized facility in a timely manner.

(9) Industrial and hazardous waste. All hazardous wastes and all nonhazardous industrial solid wastes shall be managed in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(10) Chemicals of concern. The operator of a recycling facility shall address the release of a chemical of concern from a recycling facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

§328.4. Limitations on Storage of Recyclable Materials.

(a) A recycling facility that is exempt from the registration and permit requirements under §330.4(f)(1)(B) or (C) of this title (relating to Permit Required) or that is required to submit a notification under Chapter 332 of this title (relating to Composting) shall comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government; or

(2) the facility receives more than 50% of its recyclable material directly from the public and/or from haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(b) Recyclable material may be accumulated or stored at a recycling facility only under the following conditions:

(1) the facility accumulating it can show that the material is potentially recyclable and has an economically feasible means of being recycled; and

(2) during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the material accumulated at the beginning of the period.

(A) In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type.

(B) For purposes of this section, materials that have been managed in a controlled mulching or composting process, or otherwise processed for recycling, and are contained, covered, or otherwise managed to protect them from degradation, contamination, or loss of value as recyclable materials shall not be considered to be accumulated, but shall be considered recycled when making this calculation.

(c) A recycling facility that fails to comply with the requirements of this section shall be required, if the executive director so requests in writing, to obtain a permit or registration as a municipal solid waste facility under the provisions of §330.4 of this title.

§328.5. Reporting and Recordkeeping Requirements.

(a) A recycling facility that is exempt from the registration and permit requirements under §330.4(f)(1)(B) or (C) of this title (relating to Permit Required) or that is required to submit a notification under Chapter 332 of this title (relating to Composting) shall comply with the requirements of this section unless:

(1) the owner or operator of the facility is a local government;

(2) the facility receives more than 50% of its recyclable material directly from the public and/or from haulers not affiliated with the facility; the facility receives no financial compensation to accept any of the recyclable material it receives; and the facility accumulating the recyclable material can show that the material is potentially recyclable and has an economically feasible means of being recycled; or

(3) the owner or operator of the facility owns or operates a facility permitted to dispose of municipal solid waste, or is affiliated with a person holding a permit to dispose of municipal solid waste.

(b) Within 90 days of the effective date of this section or prior to the commencement of new operations, the owner or operator of a facility that serves as a collection and processing point for only nonputrescible source-separated recyclable materials, or for mulching or composting of only source-separated yard trimmings, clean wood material, vegetative material, paper, and manure shall report on a form or forms to be provided by the executive director, describing:

(1) the type(s) of material(s) accepted for recycling;

(2) any storage of materials prior to recycling; and

(3) how the material(s) will be recycled. Subsequent reports shall be submitted to update or change any information contained in the facility report within 90 days of the effective date of the change.

(c) The owner or operator of a facility subject to the requirements of this subchapter shall maintain all records necessary to show:

(1) compliance with the requirements of §328.4 of this title (relating to Limitations on Storage of Recyclable Materials); and

(2) reasonable efforts to maintain source-separation of materials received by the facility, including:

(A) notice to customers of source-separation requirements,

(B) training of staff in the inspection of incoming loads to ensure that they contain no more than 5% incidental non-recyclable waste, and

(C) documentation of loads that have been rejected for exceeding 5% incidental non-recyclable waste.

(d) The owner or operator of a facility subject to the requirements of this section shall make these records available upon request to agents or employees of the executive director or of local governments with territorial or extra-territorial jurisdiction over the property on which the facility is located.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202282
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-4712

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SUBCHAPTER B. RECYCLING, REUSE, AND MATERIALS RECOVERY GOALS AND RATES

30 TAC §328.8

STATUTORY AUTHORITY

The amendment is proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt the rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendment is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed amendment implements THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§328.8. Measurement of Recycling Rates [~~Recordkeeping and Reporting Requirements~~] .

(a) - (g) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202283
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-4712

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CHAPTER 330. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.2

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §330.2, Definitions.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed amendment is to implement certain requirements of House Bill (HB) 2912, Article 9, §9.03, 77th Legislature, 2001. House Bill 2912 became effective on September 1, 2001. House Bill 2912 amends Texas Health and Safety Code (THSC) by adding §361.119, which requires the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. Corresponding changes to 30 TAC Chapter 328, Waste Minimization and Recycling; Chapter 332, Composting are published in the Proposed Rules section of this issue of the *Texas Register*; and to 30 TAC Chapter 330, §330.4, Permits Required (Rule Log No. 2001-082-328-WS) that was proposed in a separate rulemaking at the March 13, 2002 commission agenda as published in the March 29, 2002 issue of the *Texas Register*.

SECTION DISCUSSION

Section 330.2, Definitions, is proposed to be amended to add the definitions for "Source- separated recyclable material" and "Incidental amount(s) of non-recyclable waste." Rule Log. No. 2001-082-328-WS proposes to amend §330.4 to include the term "Source-separated recyclable material," for which there is no definition in this chapter. This definition is also to be used in applying the requirement in the proposed new §330.4(f). Facilities that process recyclable material that contains more than incidental amounts of putrescible or non-recyclable waste must obtain a permit or registration. In this context, "incidental amounts of putrescible or non-recyclable waste" would be interpreted as materials that accompany recyclables despite reasonable efforts to maintain source- separation. Examples would include "tramp materials" such as glass from recyclable metal windows, nails and roofing felt attached to recyclable shingles, and nails and sheetrock attached to recyclable lumber generated through the demolition of buildings, provided that in each instance, dual collection and transportation systems were in place for recyclable and non-recyclable materials, generators were informed of the source-separation requirements, and the recycling facility has instituted quality control measures such as inspection of incoming loads and rejection of mixed wastes. The remaining definitions are proposed to be renumbered with the addition of the proposed new definition. Language is proposed to be added to the definition of "Storage" to be consistent with the proposed new language in §330.4.

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, no significant fiscal implications are anticipated for units of state and local government due to implementation of the proposed rule. Units of local government would be exempt from the recordkeeping, reporting, and storage limitation requirements; however, units of state government would have to comply with these requirements.

This proposed rule is intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. This bill requires the commission to ensure that solid waste processing facilities

are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. In order to comply with this requirement, the commission proposes to clarify the definition of a recycling facility, implement recordkeeping and reporting requirements for recycling facilities claiming exemptions from commission registration and permits, and implement the requirement that facilities claiming to be recycling operations process 75% of their on-site materials in a calendar year.

The proposed rule will affect all recycling facilities statewide that are not part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation. The commission estimates that the number of recycling facilities owned or operated by units of state government will be very low. Currently, the commission has no records of any units of state government operating recycling facilities that would be affected by the proposed rule.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste registration and permitting, and are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rule would require recycling facilities claiming exemption from municipal solid waste registration and permitting to submit an initial report to the executive director that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate that the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The new storage limitation provision would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration or permitting and not excluded under the legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration or permitting. Affected facilities that do not meet the processing requirements would either have to change their operations or obtain a permit or registration. The commission is not aware of any existing facilities owned and operated by units of state government that are not already meeting these requirements. Therefore, the commission does not anticipate significant fiscal implications for units of state government due to implementation of the storage limitation requirement.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rule is in effect, since it would more clearly define what types of facilities are eligible for recycling facility exemptions, the public benefit anticipated from the proposed rule would be increased compliance with commission regulations and increased environmental protection.

This proposed rule is intended to implement certain provisions of HB 2912, which require the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rule will affect all recycling facilities statewide that are not already part of a permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation.

Recycling facilities that serve as collection and processing points for nonputrescible recyclable materials are currently exempt from municipal solid waste permitting and are not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rule would require recycling facilities exempt from municipal solid waste registration and permitting to submit an initial report to the executive director that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local governments upon request. The commission does not anticipate the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The proposed rule would implement a new storage limitation provision prohibiting the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste permitting or registration and not excluded under the legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste registration or permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that there are facilities that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit or registration. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of recycling facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would

affect a relatively low number of facilities that claim to be recycling materials but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rule could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates it would cost between $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range between $35,000 to $250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small and micro- businesses due to implementation of the proposed rule. This proposed rule is intended to implement certain provisions of HB 2912, which require the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rule will affect all recycling facilities statewide that are not already part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. Affected facilities include processors, handlers, and collectors of recyclable material as well as owners and operators of certain compost facilities. The commission estimates that a minimum of approximately 1,000 recycling and 134 compost facilities could potentially be affected, but expects that many of those facilities would qualify for the exclusions provided in the legislation; the commission recognizes that many of these are owned and operated by small and micro-businesses.

Recycling facilities exempt from municipal solid waste registration or permitting are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rule would require new or existing sites claiming to be recycling facilities exempt from municipal solid waste registration or permitting to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted for recycling, any storage of materials prior to recycling, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local governments upon request. The commission does not anticipate the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year.

The proposed rule would implement a new storage limitation provision that would prohibit the accumulation of unprocessed materials at a recycling facility exempt from municipal solid waste registration or permitting and not excluded under this legislation. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from municipal solid waste permitting. Affected facilities that currently do not meet the processing requirements would either have to change their operations or obtain a permit or registration. Although the total number of affected facilities is unknown, the commission recognizes that there are existing facilities that are small or micro-businesses that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a permit. However, the commission estimates that the number of affected facilities requiring major changes to operations would not be large because the majority of recycling facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be recycling materials but that are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rule could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates it would cost between $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste permit or registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a transfer facility and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range from $35,000 to $250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

The following is an analysis of the costs per employee for small and micro-businesses that are required to obtain a municipal solid waste permit to comply with the proposed rule. Small and micro- businesses are defined as having fewer than 100 or 20 employees respectively. A small business may pay an additional $2,500 per employee to comply with the proposed rule. A micro-business may pay an additional $12,500 per employee to comply with the proposed rule. The overall costs to small or micro-businesses could be higher if affected facilities are required to conduct site modifications to comply with permit requirements.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed this proposed rule 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 proposed rule is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rule is to protect the environment or reduce risks to human health from environmental exposure, the rule will not have an adverse material impact on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed amendment to Chapter 330 is intended to identify and affect only those facilities improperly disposing of municipal solid waste without an authorization and therefore, does not meet the definition of a major environmental rule. Furthermore, the proposed rule does not meet any of the four applicability requirements listed in §2001.0225(a). This proposed rule does not exceed any standard set by federal law for distinguishing facilities improperly disposing of municipal solid waste from legitimate recycling facilities, and this proposed rule is specifically required by state law under THSC, §361.119. This proposed rule does not exceed the requirements of state law under THSC, §361.119, and the proposed rule is not required by federal law. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program to distinguish facilities improperly disposing of municipal solid waste without authorization from legitimate recycling facilities. This rule is not proposed solely under the general powers of the agency, but rather specifically under THSC, §361.119, as well as the other general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public or private nuisance, which is exempt under Texas Government Code, §2007.003(b)(6). Specifically, the statutory basis for this proposed rule, THSC, §361.119, directs the commission to develop this proposed rule to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility, and to ensure that recyclable material is reused and not abandoned or disposed of and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. Garbage or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons is a public health nuisance by law under THSC, §341.011(5). A facility that operates without appropriate controls can become a private nuisance. The recordkeeping and reporting requirements in this proposed rule attempt to identify municipal solid waste facilities operating unregulated as recycling facilities and require that they obtain the proper authorization with regulatory controls.

Nevertheless, the commission further evaluated this proposed rule and performed a preliminary analysis of whether this proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this proposed rule is to ensure that recyclable material is reused and not abandoned or improperly disposed of, and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The proposed rule would substantially advance the stated purpose by requiring recordkeeping and reporting and imposing limitations on the storage of recyclable material. The records required to be kept and reports required to be filed will assist agency enforcement staff to easily distinguish legitimate recycling facilities from municipal solid waste facilities operating without proper authorization.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule does not affect a landowner's rights in private real property because this proposed rule does not burden (constitutionally), nor restrict or limit the owner's right to property, or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this proposed rule does not prevent property owners from operating legitimate recycling facilities, which reuse or recycle materials and thus legitimately protect the environment and public health and safety by reducing the volume of the municipal solid waste stream.

There are no burdens imposed on private real property, and the benefits to society are facilities properly and legitimately recycling materials and reducing the volume of the municipal solid waste stream and facilities properly and legitimately processing municipal solid waste with appropriate environmental and health and safety controls.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that the proposed rule is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action or 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 rule for consistency with the CMP goals and policies. The CMP goal applicable to this proposed rule is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) in accordance with 31 TAC §501.12(l). The CMP policy applicable to this proposed rule is 31 TAC §501.14(d)(1) - (2). In accordance with §501.14(d)(1), the construction and operation of solid waste facilities in the coastal zone shall comply with all policies for CNRAs relating to the construction and operation of solid waste treatment, storage, and disposal facilities for both new facilities and areal expansion of existing facilities. In accordance with §501.14(d)(2), the commission shall comply with all policies for CNRAs when issuing permits and adopting rules under THSC, Chapter 361.

The specific purpose of the proposed rule is to make existing commission rules consistent with the new legislative changes

made to THSC by HB 2912. The proposed rule requires the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. 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 proposed rule have a substantial effect on commission actions subject to CMP. Therefore, the commission has made a finding of consistency with the applicable goals and policy. The commission seeks public comment on the preliminary consistency determination.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-081-328-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The amendment is proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017 and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed amendment implements THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (58) (No change.)

(59) Incidental amount(s) of non-recyclable waste - Non-recyclable material that accompanies recyclable material despite reasonable efforts to maintain source-separation and that is no more than 5% by volume of each incoming load. Reasonable efforts to maintain source-separation must include: having dual collection and transportation systems in place for recyclable and non-recyclable materials at the point of generation; having informed generators and haulers of the source-separation requirements; and the recycling facility having instituted quality control measures including, at a minimum, inspection of incoming loads to ensure they do not contain more than 5% by volume of non-recyclable waste and rejection by the recycling facility of those loads that contain more than 5% by volume of non- recyclable waste. After incoming loads are processed for recycling, as defined in §328.2 of this title (relating to Definitions), all resulting non-recyclable waste must be taken to an authorized solid waste facility within one week. Incidental amount(s) of non-recyclable waste does not include non-recyclable components that are integral to recyclable material, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) damage to source-separated recyclable material during collection, unloading, and sorting of that material that renders it unmarketable, such as breakage of recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles; and

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings.

(60) [~~(59)~~] Industrial hazardous waste - Hazardous waste determined to be of industrial origin.

(61) [~~(60)~~] Industrial solid waste - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class I Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class II Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).

(62) [~~(61)~~] Inert material - A naturally occurring nonputrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

(63) [~~(62)~~] In situ - In natural or original position.

(64) [~~(63)~~] Karst terrain - An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite,

or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(65) [~~(64)~~] Lateral expansion - A horizontal expansion of the waste boundaries of an existing MSWLF unit.

(66) [~~(65)~~] Land application of solid waste - The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(67) [~~(66)~~] Leachate - A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(68) [~~(67)~~] Lead - The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

(69) [~~(68)~~] Lead acid battery - A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(70) [~~(69)~~] License -

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(71) [~~(70)~~] Liquid waste - Any waste material that is determined to contain "free liquids" as defined by EPA Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(72) [~~(71)~~] Litter - Rubbish and putrescible waste.

(73) [~~(72)~~] Lower explosive limit - The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(74) [~~(73)~~] Man-made inert material - Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

(75) [~~(74)~~] Medical waste - Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions--Farmland or ranchland), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

(76) [~~(75)~~] Monofill - A landfill or landfill trench into which only one type of waste is placed.

(77) [~~(76)~~] MSWLF - Municipal solid waste landfill facility.

(78) [~~(77)~~] Municipal hazardous waste - Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(79) [~~(78)~~] Municipal solid waste (MSW) - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(80) [~~(79)~~] Municipal solid waste facility (MSW facility) - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(81) [~~(80)~~] Municipal solid waste landfill unit (MSWLF unit) - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(82) [~~(81)~~] Municipal solid waste site (MSW site) - A plot of ground designated or used for the processing, storage, or disposal of solid waste.

(83) [~~(82)~~] Navigable waters - The waters of the United States, including the territorial seas.

(84) [~~(83)~~] New MSWLF unit - Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(85) [~~(84)~~] Nonpoint source - Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(86) [~~(85)~~] Non-RACM - Non-regulated asbestos-containing material as defined in 40 CFR 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(87) [~~(86)~~] Nuisance - Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare.

(88) [~~(87)~~] Open burning - The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(89) [~~(88)~~] Operate - To conduct, work, run, manage, or control.

(90) [~~(89)~~] Operating record - All plans, submittals, and correspondence for an MSWLF facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(91) [~~(90)~~] Operation - A municipal solid waste site or facility is considered to be in operation from the date that solid waste is first received or deposited at the municipal solid waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(92) [~~(91)~~] Operator - The person(s) responsible for operating the facility or part of a facility.

(93) [~~(92)~~] Opposed case - A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as opponent parties by the hearing examiner either at or before the public hearing on the application.

(94) [~~(93)~~] Other regulated medical waste - Medical waste that is not included within special waste from health care-related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (concerning Radiation Control).

(95) [~~(94)~~] Owner - The person who owns a facility or part of a facility.

(96) [~~(95)~~] PCB - Polychlorinated biphenyl molecule.

(97) [~~(96)~~] PCB waste(s) - Those PCBs and PCB items that are subject to the disposal requirements of 40 CFR 761. Substances that are regulated by 40 CFR 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(98) [~~(97)~~] Permit - A written permit issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a specified municipal solid waste storage, processing, or disposal facility in accordance with specific limitations.

(99) [~~(98)~~] Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(100) [~~(99)~~] Point of compliance - A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the permitted facility.

(101) [~~(100)~~] Point source - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(102) [~~(101)~~] Pollutant - Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(103) [~~(102)~~] Pollution - The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(104) [~~(103)~~] Poor foundation conditions - Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(105) [~~(104)~~] Population equivalent - The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards. For the purposes of these sections, the following population equivalents shall apply:

(A) 8,000 persons - 20 tons per day or 60 cubic yards per day;

(B) 5,000 persons - 12 1/2 tons or 37 1/2 cubic yards per day;

(C) 1,500 persons - 3 3/4 tons or 11 1/4 cubic yards per day;

(D) 1,000 persons - 225 pounds of wastewater treatment plant sludge per day (dry-weight basis).

(106) [~~(105)~~] Post-consumer waste - A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(107) [~~(106)~~] Premises - A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(108) [~~(107)~~] Processing - Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize such waste, or to recover energy or material from the waste, or to render such waste nonhazardous or less hazardous; safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. Unless the executive director determines that regulation of such activity under these rules is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 USC §6901 et seq., as amended.

(109) [~~(108)~~] Public highway - The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(110) [~~(109)~~] Putrescible waste - Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that is capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or is capable of providing food for or attracting birds, animals, and disease vectors.

(111) [~~(110)~~] Qualified groundwater scientist - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(112) [~~(111)~~] RACM - Regulated asbestos-containing material as defined in 40 CFR 61, as amended, includes: friable asbestos

material, Category I nonfriable ACM that has become friable; Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(113) [~~(112)~~] Radioactive waste - Waste that requires specific licensing under 25 TAC Chapter 401, concerning Radioactive Materials and Other Sources of Radiation, Health and Safety Code, and the rules adopted by the commission under that law.

(114) [~~(113)~~] RCRA - Resource Conservation and Recovery Act.

(115) [~~(114)~~] Recyclable material - A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(116) [~~(115)~~] Recycling - A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(117) [~~(116)~~] Refuse - Same as rubbish.

(118) [~~(117)~~] Registration - The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

(119) [~~(118)~~] Regulated hazardous waste - A solid waste that is a hazardous waste as defined in 40 CFR, Part 261.3, and that is not excluded from regulation as a hazardous waste under 40 CFR, Part 261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(120) [~~(119)~~] Relevant point of compliance - See point of compliance.

(121) [~~(120)~~] Resource recovery - The recovery of material or energy from solid waste.

(122) [~~(121)~~] Resource recovery site - A solid waste processing site at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(123) [~~(122)~~] Rubbish - Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(124) [~~(123)~~] Run-off - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(125) [~~(124)~~] Run-on - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(126) [~~(125)~~] Salvaging - The controlled removal of waste materials for utilization, recycling, or sale.

(127) [~~(126)~~] Saturated zone - That part of the earth's crust in which all voids are filled with water.

(128) [~~(127)~~] Scavenging - The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(129) [~~(128)~~] Scrap tire - Any tire that can no longer be used for its original intended purpose.

(130) [~~(129)~~] Seasonal high water table - The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a site.

(131) [~~(130)~~] Septage - The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(132) [~~(131)~~] Shall - The stated action is mandatory.

(133) [~~(132)~~] Should - The stated action is recommended as a guide in completing the overall requirement.

(134) [~~(133)~~] Site - Same as facility.

(135) [~~(134)~~] Site development plan - A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(136) [~~(135)~~] Site operating plan - A document, prepared by the design engineer in collaboration with the site operator, that provides guidance to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations throughout the life of the site in a manner consistent with the engineer's design and the commission's regulations.

(137) [~~(136)~~] Site operator - The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

(138) [~~(137)~~] Sludge - Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(139) [~~(138)~~] Small MSWLF - A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

(140) [~~(139)~~] Solid waste - Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas

or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 USC §6901 et seq.).

(141) Source-separated recyclable material - Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) damage to source-separated recyclable material during collection, unloading, and sorting of that material, such as breakage of recyclable glass, that renders the material unmarketable; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles; and

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings.

(142) [~~(140)~~] Special waste - Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under §§335.401 - 335.412 of this title (relating to Household Materials Which Could Be Classified as Hazardous Waste);

(B) Class I industrial nonhazardous waste not routinely collected with municipal solid waste;

(C) special waste from health-care-related facilities (refers to certain items of medical waste);

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 CFR, Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals;

(O) used oil;

(P) light ballasts and/or small capacitors containing polychlorinated biphenyl (PCB) compounds;

(Q) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility permitted under this chapter;

(R) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(S) any waste stream other than household or commercial garbage, refuse, or rubbish;

(T) lead acid storage batteries; and

(U) used-oil filters from internal combustion engines.

(143) [~~(141)~~] Special waste from health care-related facilities - Includes animal waste, bulk human blood, blood products, body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (concerning Definitions).

(144) [~~(142)~~] Stabilized sludges - Those sludges processed to significantly reduce pathogens, by processes specified in 40 CFR, Part 257, Appendix II.

(145) [~~(143)~~] Storage - The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere. Facilities established as a neighborhood collection point for only nonputrescible source-separated recyclable material [~~wastes~~], as a collection point for consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks, or for accumulation of used or scrap tires prior to transportation to a processing or disposal site are considered examples of storage facilities. Storage includes operation of pre-collection and post-collection as follows:

(A) pre-collection - that storage by the generator, normally on his premises, prior to initial collection;

(B) post-collection - that storage by a transporter or processor, at a processing site, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(146) [~~(144)~~] Storage battery - A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(147) [~~(145)~~] Store - To keep, hold, accumulate, or aggregate.

(148) [~~(146)~~] Structural components - Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(149) [~~(147)~~] Surface impoundment - A facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, or lagoons.

(150) [~~(148)~~] Surface water - Surface water as included in water in the state.

(151) [~~(149)~~] SWDA - Texas Solid Waste Disposal Act.

(152) [~~(150)~~] TACB - Texas Air Control Board and its successors.

(153) [~~(151)~~] Texas Civil Statutes - Vernon's Texas Revised Civil Statutes Annotated.

(154) [~~(152)~~] Transfer station - A fixed facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(155) [~~(153)~~] Transportation unit - A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(156) [~~(154)~~] Transporter - A person who collects and transports solid waste; does not include a person transporting his or her household waste.

(157) [~~(155)~~] Trash - Same as Rubbish.

(158) [~~(156)~~] Treatment - Same as Processing.

(159) [~~(157)~~] Triple rinse - To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(160) [~~(158)~~] TWC - Texas Water Commission.

(161) [~~(159)~~] Uncompacted waste - Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(162) [~~(160)~~] Unified soil classification system - The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(163) [~~(161)~~] Unconfined water - Water that is not controlled or impeded in its direction or velocity.

(164) [~~(162)~~] Unit - Municipal solid waste landfill unit.

(165) [~~(163)~~] Unstable area - A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(166) [~~(164)~~] Uppermost aquifer - The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(167) [~~(165)~~] Vector - An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(168) [~~(166)~~] Washout - The carrying away of solid waste by waters.

(169) [~~(167)~~] Waste management unit boundary - A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(170) [~~(168)~~] Waste-separation/intermediate-processing center - A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(171) [~~(169)~~] Waste-separation/recycling facility - A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(172) [~~(170)~~] Water 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 non-navigable, 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.

(173) [~~(171)~~] Water table - The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(174) [~~(172)~~] Waters of the United States - All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(175) [~~(173)~~] Wetlands - As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(176) [~~(174)~~] Yard waste - Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

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
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For further information, please call: (512) 239-4712

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CHAPTER 332. COMPOSTING

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§332.3, 332.4, 332.23, 332.33, and 332.43.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to implement certain requirements of House Bill (HB) 2912, Article 9, §9.03, 77th Legislature, 2001. House Bill 2912 became effective on September 1, 2001. House Bill 2912 amends Texas Health and Safety Code (THSC) by adding §361.119, which requires the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. Corresponding changes to 30 TAC Chapter 328, Waste Minimization and Recycling, and 30 TAC Chapter 330, Municipal Solid Waste are published in the Proposed Rules section of this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Section 332.3, Applicability, is proposed to be amended to subject mulching operations and composting facilities that are exempt from notification, registration, and permitting requirements under subsection (d) to the recordkeeping, reporting, and storage limitation requirements in proposed new §328.4 and §328.5. The proposed new sections in Chapter 328 apply to mulching and composting facilities because THSC, §361.119 addresses recycling facilities, and composting is specifically included in the definition of recycling found in THSC, §361.421(8) and in 30 TAC §330.2(115). In addition, the intent of the legislation was to apply to facilities that handle compostable materials, such as yard waste.

Section 332.4, General Requirements, is proposed to be amended by adding language to the introductory paragraph that refers to applicable penalties for violations. Proposed amendments to several paragraphs include grammatical changes and appropriate references to statutes and regulations, consistent with proposed new §328.3, relating to General Requirements for recycling facilities. The enforcement language of paragraph (3) is proposed to be deleted, because this is covered in the introductory paragraph. Paragraph (7) is proposed to be amended by providing an appropriate reference to 30 TAC §305.70, relating to Municipal Solid Waste Permit and Registration Modifications, which governs the addition or deletion of composting and recycling operations within the boundaries of permitted and registered municipal solid waste facilities. The proposed amendment also parallels the language of the proposed new §328.3 to ensure that the management of all recyclable material does not create a nuisance or threaten or impair the environment or public health and safety, as directed in the statute. Paragraph (12) is proposed to be amended to add a heading, consistent with all other paragraphs in the section.

Section 332.23, Operational Requirements, is proposed to be amended to subject composting facilities requiring a notification under §332.3(c) to the requirements of the proposed new §328.4, relating to Limitations on Storage of Recyclable Materials and proposed new §328.5 relating to Reporting and Recordkeeping Requirements, in order that the requirements for composting facilities exempt from authorization under Chapter 332 not be more stringent than those for composting facilities requiring notification under Chapter 332.

Section 332.33, Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production, is proposed to be amended by deleting a reference to TNRCC Form Number 3, "Annual Report Form for Compost Facilities Requiring Registration or Permit," because the requirement for the annual report that remains in the rule is sufficient to satisfy the recordkeeping requirements of new §328.5(c), Reporting and Recordkeeping Requirements.

Section 332.43, Required Forms, Applications, and Reports, is proposed to be amended by deleting a reference to TNRCC Form Number 3, "Annual Report Form for Composting Facilities Requiring Registration or Permit," because the requirement for the annual report that remains in the rule is sufficient to satisfy the recordkeeping requirements of new §328.5(c), Reporting and Recordkeeping Requirements.

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 rules are in effect, no significant fiscal implications are anticipated for units of state and local government due to implementation of the proposed rules. Units of local government would be exempt from the recordkeeping, reporting, and storage limitation requirements; however, units of state government would have to comply with these requirements.

These proposed rules are intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. This bill requires the commission to ensure that solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities. In order to comply with this requirement, the commission proposes to clarify that mulching or composting facilities that are exempt from municipal solid waste registration and permitting would be required to

comply with new recordkeeping, reporting, and storage limitation requirements being proposed in concurrent rulemaking. Additionally, composting operations requiring a notification under Chapter 332 would not have to comply with the recordkeeping and reporting requirements, but would have to comply with the storage limitation provisions.

The proposed rules would affect all composting and mulching facilities statewide that are not permitted or registered under Chapter 332 or part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. The commission estimates that a minimum of approximately 134 compost facilities could potentially be affected, but expects that many of these facilities would qualify for the exclusions provided in the legislation.

Composting and mulching facilities exempt from registration or permitting under Chapters 330 and 332 are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules would require new or existing sites to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted, any storage of materials, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate that the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year. Those facilities that are registered or permitted by the commission would be exempt from these provisions.

The new storage limitation provision would limit the accumulation of unprocessed materials at exempt and notification-tier composting or mulching facilities. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at facilities exempt from registration and permitting under Chapters 330 and 332. Affected facilities that do not meet the processing requirements will either have to change their operations or obtain a registration or permit. The commission is not aware of any existing facilities owned and operated by units of state government that are not already meeting these requirements. Therefore, the commission does not anticipate significant fiscal implications for units of state or local government due to implementation of the storage limitation requirement.

PUBLIC BENEFITS AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rules are in effect, since they would more clearly define what types of facilities are eligible for recycling facility exemptions, the public benefit anticipated from the proposed rules would be increased compliance with commission regulations and increased environmental protection.

These proposed rules are intended to implement certain provisions of HB 2912, which require the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rules will affect all composting and mulching facilities statewide that are not already registered or permitted under Chapter 332 or part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. The commission estimates that a minimum of approximately 134 compost facilities could potentially be affected, but expects that many of those facilities would qualify for the exclusions listed in the legislation.

In order to operate, composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332 are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules will require new or existing sites to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted, any storage of materials, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not estimate that the recordkeeping and reporting requirements would cost affected owners and operators more than $500 a year. Those facilities that are permitted by the commission would be exempt from these provisions.

The proposed rules would implement a new storage limitation provision that would limit the accumulation of unprocessed materials at all composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from permitting and registration under Chapters 330 and 332. Affected facilities that currently do not meet the processing requirements will either have to change their operations or obtain a registration or permit. Although the total number of affected facilities is unknown, the commission recognizes that existing facilities impacted by these requirements would be required to make changes to existing operating procedures or obtain a permit. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of composting and mulching facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be composting or mulching materials, but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rules could be significant, depending on the facility and what compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the

commission estimates it would cost from $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a solid waste transfer station or composting facility under Chapters 330 or 332 and store waste on-site, the costs of hiring a consultant, preparing the application, application preparation, legal, and public notice costs would range between $35,000 to $250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs related to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small and micro- businesses due to implementation of the proposed rules. These proposed rules are intended to implement certain provisions of HB 2912, which require the commission to ensure solid waste processing facilities are regulated as solid waste facilities and are not allowed to operate unregulated as recycling facilities.

The proposed rules will affect all composting and mulching facilities statewide that are not already registered or permitted under Chapter 332 or part of a registered or permitted municipal solid waste site, except those excluded under the legislation. Excluded facilities are those owned or operated by local governments and those whose primary function is to process materials that have a resale value greater than the cost of processing the materials. The legislation also excludes facilities owned, operated, or affiliated with municipal solid waste permit holders from the recordkeeping and reporting requirements of the new rules. The commission estimates that a minimum of approximately 134 composting facilities, many of which are anticipated to be owned and operated by small or micro- businesses, could potentially be affected, but expects that many of those facilities would qualify for the exclusions provided in the legislation.

In order to operate, composting and mulching facilities exempt from registration and permitting under Chapters 330 and 332 are currently not required to maintain records, provide reports to the commission, or process a certain amount of received materials within a year. The proposed rules would require new or existing sites to submit an initial report to the executive director, prior to commencing or continuing operations, that lists the type(s) of materials to be accepted, any storage of materials, and how the materials will be recycled. Subsequent reports would have to be filed only if the facilities' operations change. Owners and operators of affected facilities would be required to maintain compliance records, and make the records available to the executive director and local government officials upon request. The commission does not anticipate the recordkeeping and reporting requirements will cost affected owners and operators more than $500 a year. Those facilities that are permitted by the commission would be exempt from these provisions.

The proposed rules would implement a new storage limitation provision which would limit the accumulation of unprocessed materials at all composting and mulching facilities exempt from permitting and registration under Chapters 330 and 332. At a minimum, 75% of the material stored on January 1 of a calendar year would have to be processed during that year. This requirement is intended to prevent the unsafe storage of materials at recycling facilities exempt from permitting and registration under Chapters 330 and 332. Affected facilities that currently do not meet the processing requirements will either have to change their operations or obtain a permit. Although the total number of affected facilities is unknown, the commission recognizes that there are small and micro-businesses that would be impacted by these requirements and would be required to make changes to existing operating procedures or obtain a registration or permit. However, it is anticipated that the number of affected facilities requiring major changes to operations would not be large because the majority of composting and mulching facilities already meet or exceed the 75% processing requirement in order to maintain profits. The commission expects that the proposed processing provision would affect a relatively low number of facilities that claim to be composting or mulching materials, but are actually receiving and storing materials on-site for long periods of time.

The commission anticipates that the costs to comply with the proposed rules could be significant, depending on the facility and which compliance option it chooses to pursue. For those sites that have significant backlogs of materials that would have to be processed in order to meet the 75% processing requirement, the commission estimates it would cost from $20 to $200 per additional ton processed, depending on the type of site and material being processed. If a facility decides to obtain a municipal solid waste registration (the type of authorization that would apply to the great majority of facilities requiring an authorization) to operate as a solid waste transfer station or composting facility under Chapters 330 or 332 and store waste on-site, the costs of hiring a consultant, preparing the application, legal, and public notice costs would range between $35,000 to $250,000, depending on the type and location of the site, and the types of waste to be stored on-site. There could also be technical costs relating to preparing the site to meet existing environmental standards. The site preparation costs would vary considerably, depending on the current condition of the site, its location, and what type of modifications would be required to meet the registration requirements. Costs associated with obtaining a permit for the disposal of municipal solid waste typically run upwards of $1 million, in addition to site development expenses and cleanup of accumulated wastes.

The following is an analysis of the costs per employee for small and micro-businesses that are required to obtain a municipal solid waste permit to comply with the proposed rules. Small and micro- businesses are defined as having fewer than 100 or 20 employees respectively. A small business may pay an additional $2,500 per employee to comply with the proposed rules. A micro-business may pay an additional $12,500 per employee to comply with the proposed rules. The overall costs to small or micro-businesses could be higher if affected facilities are required to conduct site modifications to comply with permit requirements.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed these proposed rules 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 proposed rules are not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rules is to protect the environment or reduce risks to human health from environmental exposure, the rules will not have an adverse material impact on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed amendments to Chapter 332 are intended to identify and affect only those facilities improperly disposing of municipal solid waste without an authorization, and therefore, do not meet the definition of a major environmental rule. Furthermore, the proposed rules do not meet any of the four applicability requirements listed in §2001.0225(a). These proposed rules do not exceed any standard set by federal law for distinguishing facilities improperly disposing of municipal solid waste from legitimate recycling facilities, and these proposed rules are specifically required by state law under THSC, §361.119. These proposed rules do not exceed the requirements of state law under THSC, §361.119, and the proposed rules are not required by federal law. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on distinguishing facilities improperly disposing of municipal solid waste without authorization from legitimate recycling facilities. These proposed rules are not proposed solely under the general powers of the agency, but rather specifically under THSC, §361.119, as well as the other general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public or private nuisance, which is exempt under Texas Government Code, §2007.003(b)(6). Specifically, the statutory basis for these proposed rules, THSC, §361.119, directs the commission to develop these proposed rules to ensure that a solid waste processing facility is regulated as a solid waste facility under the Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility, and to ensure that recyclable material is reused and not abandoned or disposed of and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. Garbage or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons is a public health nuisance by law under THSC, §341.011(5). A facility that operates without appropriate controls can become a private nuisance. The recordkeeping and reporting requirements in these proposed rules attempt to identify municipal solid waste facilities operating unregulated as recycling facilities and require that they obtain the proper authorization with regulatory controls.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to ensure that recyclable material is reused and not abandoned or improperly disposed of, and that recyclable material does not create a nuisance or threaten or impair the environment or public health and safety. The proposed rules would substantially advance the stated purpose by requiring recordkeeping and reporting and imposing limitations on the storage of recyclable material. The records required to be kept and reports required to be filed will assist agency enforcement staff to easily distinguish legitimate recycling facilities from municipal solid waste facilities operating without proper authorization.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because these proposed rules do not burden (constitutionally), nor restrict or limit the owner's right to property, or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these proposed rules do not prevent property owners from operating legitimate recycling facilities, which reuse or recycle materials and thus legitimately protect the environment and public health and safety by reducing the volume of the municipal solid waste stream.

There are no burdens imposed on private real property, and the benefits to society are facilities properly and legitimately recycling materials and reducing the volume of the municipal solid waste stream and facilities properly and legitimately processing municipal solid waste with appropriate environmental or health and safety controls.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22, and has found that the proposed rules are consistent with the applicable Texas Coastal Management Program (CMP) goals and policies. The proposed rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and 501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, andenhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas (CNRAs). The proposed rules do not govern any of the activities that are within the designated coastal zone management area or otherwise specifically identified under the Texas Coastal Management Act or related rules of the Coastal Coordination Council. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-081-328-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §332.3, §332.4

STATUTORY AUTHORITY

The amendments are proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendments are also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed amendments implement THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§332.3. Applicability.

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

(d) Operations exempt from facility notification, registration, and permit requirements. The following operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements), and exempt from notification, registration and permit requirements found in Subchapter B of this chapter (relating to Operations Requiring Notification), Subchapter C of this chapter (relating to Requirements for Registered Facilities), and Subchapter D of this chapter (relating to Permit Required). Operations under paragraphs (1) and (3) of this subsection are subject to the requirements of an exempt recycling facility under §328.4 and §328.5 of this title (relating to Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements).

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

§332.4. General Requirements.

All composting facilities and backyard operations shall comply with all of the following general requirements. Violations of these requirements are subject to enforcement by the commission and may result in the assessment of civil or administrative penalties pursuant to Texas Water Code, Chapter 7 (relating to Enforcement).

(1) Compliance with Texas Water Code. The activities that [~~which~~] are subject to this chapter shall be conducted in a manner that [~~which~~] prevents the discharge of material to or the pollution of surface water or groundwater in accordance with the provisions of the Texas Water Code, Chapter 26 (relating to Water Quality Control).

(2) Nuisance conditions. The composting, mulching, and land application of material shall be conducted in a sanitary manner that [~~which~~] shall prevent the creation of nuisance conditions as defined in §330.2 of this title (relating to Definitions) and as prohibited [~~mandated~~] by the Texas Health and Safety Code, Chapters 341 and 382 (relating to Minimum Standards of Sanitation and Health Protection Measures; and Clean Air Act), [~~and~~] the Texas Water Code, Chapter 26 (relating to Water Quality Control), §101.4 of this title (relating to Nuisance), [~~as defined in these regulations,~~] and any other applicable regulations or statutes.

(3) Discharge to surface water or groundwater. The discharge of material to or the pollution of surface water or groundwater as a result of [~~resulting from~~] the beneficial use or reuse and recycling of material is prohibited [~~subject to enforcement by the commission and may result in the assessment of civil penalties~~].

(4) - (6) (No change.)

(7) Operations on a municipal solid waste landfill unit. No composting activities shall be conducted within the permitted boundaries [~~on the cap~~] of a municipal solid waste landfill without prior approval by the executive director as required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) [~~the commission on a case by case basis~~].

(8) (No change.)

(9) Leachate. Leachate from landfills and mixed municipal solid waste composting operations shall not be used on any composting process, except mixed municipal solid waste composting, and shall not be added after [~~subsequent to~~] the designation of an end-product grade unless the product is reanalyzed to determine end-product quality.

(10) Nonhazardous industrial solid waste. This chapter applies to the composting, mulching, and land application of only the following nonhazardous industrial solid waste when the composting occurs on property that [~~which~~] does not qualify for the exemption from the requirement of an industrial solid waste permit pursuant to §335.2(d) of this title (relating to Permit Required):

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

(11) Industrial and hazardous waste. Any of the materials listed in paragraph (10) of this section that [~~which~~] are not managed in accordance with the requirements of this chapter, all hazardous wastes, and any nonhazardous industrial solid wastes not listed in paragraph (10) of this section shall be managed in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(12) Chemicals of concern. The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202277
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-4712

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SUBCHAPTER B. OPERATIONS REQUIRING A NOTIFICATION

30 TAC §332.23

STATUTORY AUTHORITY

The amendment is proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017 and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under TWC.

The proposed amendment implements THSC, §361.119; §361.032, which provides the commission and local governments with right of entry to inspect facilities and investigate conditions concerning solid waste management and control; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§332.23. Operational Requirements.

Operation of the facility shall comply with all of the following operational requirements.

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

(5) The facility shall be subject to the requirements of §328.4 of this title (relating to Limitations on Storage of Recyclable Materials) and §328.5 of this title (relating to Reporting and Recordkeeping Requirements).

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202278
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-4712

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SUBCHAPTER C. OPERATIONS REQUIRING A REGISTRATION

30 TAC §332.33

STATUTORY AUTHORITY

The amendment is proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC.

The proposed amendment implements THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§332.33. Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production.

(a) The operator of the compost facility shall submit the following:

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

(3) Annual report. The operator shall submit annual written reports [~~using TNRCC Form Number 3, "Annual Report Form for Compost Facilities Requiring Registration or Permit," available from the commission~~]. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(4) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202279
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 239-4712

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SUBCHAPTER D. OPERATIONS REQUIRING A PERMIT

30 TAC §332.43

STATUTORY AUTHORITY

The amendment is proposed under THSC, Texas Solid Waste Disposal Act, §361.119, which provides the commission with the authority to adopt rules to ensure that a solid waste processing facility is regulated as a solid waste facility under Texas Solid Waste Disposal Act and is not allowed to operate unregulated as a recycling facility; §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under Texas Solid

Waste Disposal Act; §361.022, which establishes state public policy concerning municipal solid waste to include recycling of waste as a preferred method and requires the commission to consider that policy when adopting rules; and §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC.

The proposed amendment implements THSC, §361.119; §361.061, which provides the commission with the authority to require and issue permits for solid waste facilities; and TWC, §5.103.

§332.43. Required Forms, Applications, and Reports.

The operator shall submit all of the following.

(1) (No change.)

(2) Annual report. The operator shall submit annual written reports [~~using TNRCC Form Number 3, "Annual Report Form for Composting Facilities Requiring Registration or Permit," available from the commission~~]. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

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

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202280
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: May 26, 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 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to §§65.9, 65.316, and 65.374, concerning Wildlife. The amendments would impose a date upon which certain restrictions governing hunting activities in state-owned riverbeds in Dimmit, Uvalde, and Zavala counties would cease effectiveness. Under the terms of Government Code, §2001.039, the department has conducted a required review of regulations contained in Chapter 65. The proposed amendments are published as a result of that review. The department has determined that the original justification for the rules may not exist, and to that end will conduct investigations to determine if the provisions should be maintained beyond September 1, 2003.

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 compliance with the provisions of Government Code, §2001.039, which requires state agencies to review their regulations and readopt, readopt with changes, or repeal them no less than once every four years.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed.

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)

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.9

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to provide open seasons for the hunting, taking, or possession of game animals, game birds, or aquatic animal life if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve game animals, game birds, or aquatic animal life; Chapter 64, which provides the commission with the authority to provide an open season only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies; and Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

The amendments affect Parks and Wildlife Code, Chapters 64, 65, and 71.

§65.9. Open Seasons: General Rules.

(a) There is no open season on game animals or game birds on public roads and highways or in[~~,~~] the right-of-way of public roads and highways[~~; or in any state-owned riverbed in Dimmit, Uvalde, and Zavala counties~~].

(b) No antlerless deer permit is required to take an antlerless deer during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(c) The hunting of roosting turkey is unlawful.

(d) There is no open season on game animals or game birds in any state-owned riverbed in Dimmit, Uvalde, and Zavala counties. The provisions of this subsection cease effect on September 1, 2003.

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

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202215
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 389-4775

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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.316

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to provide open seasons for the hunting, taking, or possession of game animals, game birds, or aquatic animal life if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve game animals, game birds, or aquatic animal life; Chapter 64, which provides the commission with the authority to provide an open season only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies; and Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

The amendments affect Parks and Wildlife Code, Chapters 64, 65, and 71.

§65.316. Closed Areas.

(a) The season is closed on migratory game birds on public roads and highways, the[, ~~or~~] rights-of-way of public roads and highways, [~~the state-owned riverbeds in Dimmit, Uvalde and Zavala Counties, including but not limited to the Nueces and Frio Rivers,~~] and state wildlife preserves and sanctuaries unless an open season is otherwise provided. The open season for the taking of migratory game birds on any federal wildlife refuge shall be in accordance with the special hunting regulations duly adopted and published by the U.S. Fish and Wildlife Service.

(b) The season is closed on migratory game birds in the state-owned riverbeds in Dimmit, Uvalde and Zavala Counties, including but not limited to the Nueces and Frio Rivers. The provisions of this subsection cease effect on September 1, 2003.

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

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202216
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 389-4775

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SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

31 TAC §65.374

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to provide open seasons for the hunting, taking, or possession of game animals, game birds, or aquatic animal life if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve game animals, game birds, or aquatic animal life; Chapter 64, which provides the commission with the authority to provide an open season only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies; and Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

The amendments affect Parks and Wildlife Code, Chapters 64, 65, and 71.

§65.374. General Rules.

(a) No person may take fur-bearing animals on public roads and highways or their rights-of-way, or in the state-owned riverbeds in Uvalde, Zavala, and Dimmit counties. The provisions of this subsection cease effect on September 1, 2003.

(b) Each fur-bearing animal or pelt taken or possessed in violation of this subchapter shall constitute a separate offense.

(c) No person may possess a live skunk or civet cat without a letter of authorization from the wildlife division.

(d) No retail fur buyer may possess undried pelts during the period May 1 through October 31.

(e) No wholesale fur dealer or retail fur buyer may purchase pelts from a trapper from April 6 through October 31.

(f) Nuisance fur-bearing animals may be taken in any number by any means at any time.

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

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202217
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 389-4775

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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 §19.1501

The Texas Department of Human Services (DHS) proposes to amend §19.1501, concerning pharmacy services, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to provide additional protection for residents during the implementation of Senate Bill 355, 77th Legislature, which requires nursing facility residents to give informed consent before psychoactive medication is administered. This rule requires the federally mandated monthly drug regimen reviews to be kept in the resident's medical record, which will facilitate communication between the pharmacist and the physician, regarding concerns about prescribing practices.

James R. Hine, Commissioner, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. 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 enforcing the section will be greater protection of residents from inappropriate administration of psychoactive drugs. There will be no adverse economic effect on small or micro businesses because current rules require the monthly pharmacist drug regimen review. This rule simply requires the review to be kept in the resident's medical record, where it will be more accessible to the physician. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438- 3111 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-177, 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 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, §242.037.

§19.1501. Pharmacy Services.

A licensed-only facility must assist the resident in obtaining routine drugs and biologicals and make emergency drugs readily available, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources). A Medicaid-certified facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources). See also §19.901(12) and (13) of this title (relating to Quality of Care) for information concerning drug therapy and medication errors.

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

(4) Drug regimen review.

(A) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist. The consultant pharmacist's drug regimen review must be maintained in the resident's clinical record.

(B) (No change.)

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

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202258
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 26, 2002
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) proposes to amend §48.6003, concerning client eligibility criteria, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to comply with rider 37 to the DHS appropriations in the Appropriations Act, 77th Legislative Session, that allows DHS to transfer facility funds to the Community Care program to cover the cost of the shift in services. The section also establishes the basis for approving or denying requests for changes in the waiver client's service plan.

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 government 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 section will be that a Texas nursing facility (NF) resident will not have to continue living in a NF until funding is appropriated in the Community Care budget

for Medicaid waiver services, if he is a Medicaid- eligible NF resident and is approved for Community Care services while residing in a NF. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the proposal will allow individuals who qualify for Medicaid payment to be served in the community. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Gerardo Cantu at (512) 438-3693 in DHS's Community Care Waiver section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-117, 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 this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

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

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

§48.6003. Client Eligibility Criteria.

(a) (No change.)

(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) - (2) (No change.)

(3) Individuals residing in a Texas nursing facility who are enrolled in Medicaid will be approved for Community Care services if they request services while residing in a Texas nursing facility and meet all eligibility criteria for Community Care services. If the individual is discharged from the nursing facility for a community setting before being determined eligible for Medicaid nursing facility services and Community Care services, the individual will be denied Community Care services unless these services are part of an entitlement program. Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.

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

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202300
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 26, 2002
For further information, please call: (512) 438-3734

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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 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE
SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners has withdrawn from consideration the proposed amendments to §51.141 which appeared in the February 8, 2002, issue of the *Texas Register* (27 TexReg 861).

Filed with the Office of the Secretary of State on April 9, 2002.

TRD-200202186
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: April 9, 2002
For further information, please call: (512) 458-1091

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 473. FEES

22 TAC §473.1, §473.2

The Texas State Board of Examiners of Psychologists has withdrawn from consideration proposed amendments to §473.1 and §473.2 which appeared in the February 15, 2002 issue of the *Texas Register* (27 TexReg 1097).

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202252
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 12, 2002
For further information, please call: (512) 305-7700

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §53.10, §53.15

The Teacher Retirement System of Texas has withdrawn from consideration proposed new §53.10, and §53.15 which appeared in the January 4, 2002, issue of the *Texas Register* (27 TexReg 110).

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

TRD-200202322
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: April 15, 2002
For further information, please call: (512) 542-6115

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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 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute 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 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER A. THE BOARD

22 TAC §51.5

The Texas State Board of Barber Examiners adopts an amendment to §51.5, concerning Good Standing Required for License Renewal. The amendment is adopted without changes to the proposed text as published in the February 8, 2002, issue of *Texas Register* (27 TexReg 857).

The amendment provides that neither a license nor a permit may be issued or renewed unless the licensee is in good standing with the Board.

The Board received no comments on the proposed amendment to §51.5.

The amendment is adopted under the Texas Occupations Code, Subchapters F and M, and §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202290
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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22 TAC §51.7

The Texas State Board of Barber Examiners adopts new §51.7, concerning Cost of Administrative Hearings without changes to the proposed text as published in the February 8, 2002, issue of the *Texas Register* (27 TexReg 857).

The new rule is pursuant to House Bill 2812, 77th Texas Legislature, Regular Session, and sets forth procedures regarding administrative fines and penalties.

The Board received no comments on the proposed new §51.7.

The new rule is adopted under the Texas Occupations Code Chapter 1601 (Subchapter O. Administrative Penalties) and Chapter 1601, §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this new rule.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202287
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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SUBCHAPTER B. BARBER COLLEGES, SCHOOLS, AND STUDENTS

22 TAC §51.30

The Texas State Board of Barber Examiners adopts an amendment to §51.30, concerning Registered Barber Course. The amendment is adopted without changes to the proposed text as published in the February 8, 2002, issue of *Texas Register* (27 TexReg 858).

The amendment is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session. The amendment provides that manicuring shall be optional and that first aid and safety precautions shall be 11 hours rather than 10 hours in the curriculum to prepare a student for the examination for the registered barber license.

The Board received no comments on the proposed amendment to §51.30.

The amendment is adopted under the Texas Occupations Code Chapter 1601, §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202285
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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22 TAC §51.31

The Texas State Board of Barber Examiners adopts an amendment to §51.31, concerning Manicurist Course. The amendment is adopted without changes to the proposed text as published in the February 8, 2002, issue of *Texas Register* (27 TexReg 859).

The amendment is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session. The amendment provides for a new manicurist license training course consisting of 600 rather than 300 hours of instruction for not less than 16 weeks rather than eight weeks.

The Board received no comments on the proposed amendment to §51.31.

The amendment is adopted under the Texas Occupations Code Chapter 1601, §1601.354 and §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202286
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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22 TAC §51.32, §51.33

The Texas State Board of Barber Examiners adopts the repeal of §51.32, concerning Wig Specialist Course and §51.33, concerning Wig Instructor Course. The repeals are adopted without changes to the proposal as published in the February 8, 2002, issue of *Texas Register* (27 TexReg 860).

The repeal is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session. The repeal deletes the following requirements for a barber school permit: Wig Specialist Course (300 hours of instruction in the care and treatment of wigs) and Wig Instructor Course (200 hours of instruction in advanced courses and methods of the care of wigs).

The Board received no comments on the proposed repeal of §51.32 and §51.33.

The repeal is adopted under the Texas Occupations Code Chapter 1601, §1601.354(a) and 1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

Texas Occupations Code Chapter 1602, §1602.002 is affected by this repeal.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202288
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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SUBCHAPTER C. EXAMINATION AND LICENSING

22 TAC §51.77

The Texas State Board of Barber Examiners adopts new §51.77, concerning Barber Shop Permit. The new rule is adopted without changes to the proposed text as published in the February 8, 2002, issue of *Texas Register*(27 TexReg 860).

The new rule is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session, and sets forth the criteria for the issuance of a barbershop permit to an applicant.

The Board received no comments on the proposed new §51.77.

The new rule is adopted under the Texas Occupations Code Chapter 1601, §1601.151 and §1601.303 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this new rule.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202289
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 458-4901

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SUBCHAPTER D. BARBER SHOPS

22 TAC §51.98

The Texas State Board of Barber Examiners adopts new §51.98, concerning State-Mandated Fee for Occupational Licensing Transactions Using the Internet. The new rule is adopted without changes to the proposed text as published in the March 8, 2002, issue of *Texas Register* (27 TexReg 1640).

The new rule is pursuant to Senate Bill 187 and Senate Bill 645, 77th Texas Legislature, Regular Session, and sets forth the subscription fee per licensee prescribed by the TexasOnline Authority for the Texas State Board of Barber Examiners.

The Board received no comments on the proposed new §51.98.

The new rule is adopted under the requirements of Senate Bill 187 and Senate Bill 645, 77th Texas Legislature, Regular Session, and the Texas Occupations Code Chapter 1601, §1601.155 Authority to Set Fees and §1601.151 General Powers and Duties of the Board which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this new rule.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202291
Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: May 2, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 458-4901

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts amendments to §463.11, concerning Licensed Psychologist, without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1095).

The amendments are being adopted in order to remove the limited exceptions granted to out-of-state psychologists with experience so that the more general licensure for experience could be added to Board rule §463.13.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202247
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 2, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 305-7700

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22 TAC §463.13

The Texas State Board of Examiners of Psychologists adopts new Board rule §463.13, concerning Requirements for Experienced Out-of-State Applicants, without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1095).

The new rule is being adopted in order to facilitate licensure of long-term licensees of other states who do not have a reciprocity agreement with Texas. The rule requires provisional licensure,

but reduces the technical requirements for verifying supervised experience.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202248
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 2, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 305-7700

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22 TAC §463.15

The Texas State Board of Examiners of Psychologists adopts amendments to §463.15, concerning Oral Examination, without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1096).

The amendments are being adopted in order to exempt persons who qualify for licensure by experience (Board rule §463.13) from having to take the Oral Examination.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202249
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 2, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.18

The Texas State Board of Examiners of Psychologists adopts amendments to §465.18, concerning Forensic Services, without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1096).

The amendments are being adopted in order to add substantive requirements for psychologists who perform child custody evaluations. The amendments are being re-proposed to add an exception to the informed consent requirement for situations in which consent is precluded by court order.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202250
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 2, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.5

The Texas State Board of Examiners of Psychologists adopts amendments to §473.5, concerning Miscellaneous Fees (Not Refundable), without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1098).

The amendments are being adopted in order to clarify miscellaneous fees for staff analysis of the Jurisprudence Examination.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on April 12, 2002.

TRD-200202251
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 2, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

28 TAC §§7.201 - 7.205, 7.209 - 7.213

The Commissioner of Insurance adopts amendments to §§7.201-7.205 and 7.209-7.213, concerning administrative regulation under the Insurance Holding Company System Regulatory Act (Insurance Code Article 21.49-1). These sections are adopted without changes to the proposed text as published in the January 25, 2002, issue of the *Texas Register* (27 TexReg 565) and will not be republished.

The amendments are necessary to implement changes made to the Act by Senate Bill 605, 77th Legislature, 2001, to improve the administrative efficiency of the Texas Department of Insurance, and to promote compliance by entities subject to the Act. Background checks will provide another tool for the department, in its efforts to protect policyholders by identifying persons who have a criminal background, so that the department can consider the potential for problems such as illegal use of company funds, non-compliance with federal statutes and fitness and competency of management. Additionally, the requirement for background checks is consistent with other states whose statutes or regulations require fingerprints. Also, the amendments are necessary to correct citations to the Insurance Code, reflect division name changes within the Texas Department of Insurance, accurately reflect technical corrections to forms and delete duplicative language.

The amendments to §§7.201(a)(1), 7.202(b)(1), 7.203(n), 7.209(d), and 7.210(e) reflect a change in name of the division within the Financial Program which handles holding company transactions; the name change is from Financial Monitoring to Financial Analysis and Examinations. The amendments to §§7.201(b)(1) and 7.209(m)(4) remove the reference to the previous State Board of Insurance which no longer exists. The amendment to §7.202(a)(4) adds the commissioner's senior associates within the definition of "commissioner." Amendments to §7.203(g), (h), (n), §7.204(d)(1), §7.205(m) and (n) correct citations which have changed as a result of recodification of the Insurance Code. The amendments to §7.203(n) clarify that notices of ordinary dividends can be provided by facsimile; clarify that ordinary dividends can be paid after ten calendar days notice to the commissioner; and adopt a revised Form HCDividend (Rev. 01/2002). Section 7.204(a)(2)(G) is amended to provide for the filing of notice of the participation in an investment pool by a property and casualty insurer, and the remaining subparagraph is relettered. The amendment to §7.204(b) clarifies that transactions with affiliates are subject to receipt of the applicable filing fee by the commissioner and provides that contracts, agreements, or memoranda of understanding must provide for settlement within 90 days. The amendment to §7.204(e) removes a reference to a previously repealed section. The amendments to §7.205 clarify that all acquisitions and changes of control are subject to the Act, §5(a) and implement Senate Bill 605 by deleting language repealed by that bill. The amendments to §7.205(f) provide for a denial of an acquisition or change of control by the commissioner. The amendments to §7.209(a) are made for consistency with §7.205(a) and to change the year as a result of the change in the century. The amendments to §7.209(d) provide for certain persons in an acquisition or change of control to provide fingerprint cards to the commissioner. The amendment to §7.209(d)(2) is necessary to facilitate background checks on individuals associated with an applicant in the acquisition or change of control of a domestic insurer through the Federal Bureau of Investigation and the Texas Department of Public Safety. The amendment to §7.209(f)(3) adds a provision that requires disclosure of plans for changes in the privacy policies and procedures of a domestic insurer and provides for an affirmative statement by the acquiring party of the domestic insurer's compliance with applicable statutes and regulations regarding privacy. The amendments to §§7.209(n), 7.210(a) and (j), and 7.213(a) and (i) correct references and change the year as a result of the change of the century. The amendment to §7.210(f)(1) adds a new subparagraph (C) that provides for disclosure of investment activities of an investment pool and transactions between pools and participants and reletters the remaining subparagraphs. The amendments to §7.211(a) and (f) and §7.212(a) and (p) change the year as a result of the change in the century. Also, duplicative language has been deleted. Form HCDividend, referenced under §7.203(n), is amended to incorporate technical corrections to line numbers as a result of changes in the statutory annual statement blank and to reflect the name of the Financial Analysis and Examinations Division. The biographical affidavit form referenced under §7.201(a)(1) is amended to add a notice concerning correction of information, as required by House Bill 1922, 77th Legislature, 2001. Form HCDividend is available by contacting the Financial Analysis and Examinations Division, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, or by calling (512) 322-5002, or by fax to (512) 322-5082.

No comments were received.

The amendments are adopted under the Insurance Code Article 21.49-1 and Section 36.001. Article 21.49-1, §11 authorizes the Commissioner of Insurance to issue such rules and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Act. Section 36.001 authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department.

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

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

TRD-200202319
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: May 5, 2002
Proposal publication date: January 25, 2002
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.119

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §7.119, *Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission*, *without change* to the proposed text as published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8477) and will not be republished.

New §7.199 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The rule will adopt by reference a Texas Department of Transportation (TxDOT) memorandum of understanding (MOU), streamlining coordination between the commission and TxDOT by consolidating separate MOUs currently in the air regulations (30 TAC §114.250) and in water regulations (30 TAC §305.521). Rule actions regarding these separate MOUs are proposed in this issue of the *Texas Register*.

The MOU will address transportation planning issues required by Texas Transportation Code, §201.607, between TxDOT and state natural resource agencies, specifically including processing of documents required by the National Environmental Policy Act. The MOU establishes periods for review of documents coordinated under §201.607, and ensures coordination between the agencies on road projects that could have environmental impacts. As a result of comments received, the rule language for new §7.119 has not changed, but changes were made to the text of the MOU. The full text of the amended MOU is concurrently adopted in this issue of the *Texas Register* by TxDOT in 43 TAC §2.23.

SECTION DISCUSSION

The rule adopts by reference an MOU with TxDOT. The following sections are included in the MOU.

The *Purpose* section of the MOU outlines TxDOT and commission policy as they apply to the environmental review of transportation projects. The section contains statements explaining why 43 TAC §§2.40 - 2.51, TxDOT considers coordination of transportation projects with natural resource agencies important and how the MOU will facilitate that coordination.

The *Authority* section outlines the governing statutes for both the MOU and the rulemaking requirements of the commission.

The *Definitions* section provides clarification for important terms used in the MOU.

The *Responsibilities* section states the responsibilities of each agency as they apply to the environmental review of transportation projects.

The MOU section on *Provisions Regarding Coordination and Document Review* has two important paragraphs. Paragraph (1) establishes the philosophy and rationale for early and timely actions by the agencies and the necessity for TxDOT districts and commission regional offices to work together. Paragraph (2) defines the most important air and water quality issues selected by the department and the commission that require project coordination of environmental documents. For air quality, transportation projects in nonattainment and major metropolitan areas are singled out. For water quality, transportation projects which encroach upon impaired stream segments identified under federal Clean Water Act (CWA), §303(d), the recharge and contributing zones of the Edwards Aquifer, and wetlands requiring CWA, §401 are certification selected as being most important. The paragraph also contains administrative guidance for processing environmental documents.

Two sections entitled, *Additional Provisions Regarding Air Quality* and *Additional Provisions Regarding Water Quality* provide for exchange of data and studies to support environmental reviews.

The *Dispute Resolution* section provides a stepwise procedure for resolving disputes.

The *Review of MOU* section calls for review and update every five years, or if necessary due to changes in state or federal law.

Copies of the MOU are available from the commission's Chief Clerk's Office.

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 that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). These four requirements are: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking provides for an MOU which satisfies the need of the commission and TxDOT to coordinate regulatory programs and to ensure that overlapping areas of responsibility are clarified. The rulemaking/MOU places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the rule under Texas Government Code, §2007.43. The specific purpose of the rule is to establish an MOU between TxDOT and the commission. The rule will substantially advance this purpose by outlining coordination of activities with TxDOT in areas with an overlap of responsibilities. Promulgation and enforcement of the rule will not burden private real property which is the subject of §2007.43, because it pertains to an understanding between state agencies on their joint jurisdiction and on areas of coordination. The understanding places no requirements on the regulated community.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

Staff reviewed the rulemaking for incorporation of the MOU in Chapter 7 by reference for consistency with the Texas Coastal Management Program (CMP) goals and policies, in accordance with the rules of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), as well as the commission's rules in 30 TAC Chapter 281, Subchapter B, *Consistency with the Coastal Management Program*. The review determined that the action is consistent with the applicable CMP goals and policies. The CMP policies applicable to this rulemaking action includes the policy that the commission rule comply with regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area and that the commission rules comply with CMP goals in 31 TAC §501.12, and specifically §501.12(7), which is to insure that agency and subdivision decision-making affecting Coastal Natural Resource Areas (CNRAs) is efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARINGS AND COMMENTERS

Proposals for this rule were published September 29, 2000 (25 TexReg 9863) and October 26, 2001 (26 TexReg 8496). Public hearings were previously held on October 24, 2000 and November 27, 2001. The comment period for the proposal of September 29, 2000 closed on November 13, 2000, and the comment period for the proposal of October 26, 2001 closed on December 3, 2001. One person attended the hearing held on October 24, 2000, and no persons were present at the hearing of November 27, 2001. No comments were received during either hearing or the November 27, 2001 comment period on the adoption of §7.119. Comments were received from one individual during the September 29, 2000 comment period and are addressed in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

With regard to subsection (a)(1)(A), (B), and (E) of the MOU, an individual requested adding and defining language that explains TxDOT policy. With regard to subsection (a)(2)(C) and (E) of the MOU, the individual requested defining language that explains TNRCC policy. This language includes the words *common sense*, *good science*, and *meaningful*.

The commission disagrees with these comments. The "policy" paragraphs are statements of the policies of each agency and are meant to be broad, general statements reflecting the area of jurisdiction and purpose provided by the legislature. These statements are provided in the MOU as background and do not directly impact the obligations of each agency under the MOU. The commission believes that the terms *common sense*, *good science*, and *meaningful* are commonly understood and do not need definition.

With regard to subsection (a)(4), an individual requested a definition for the word *sound* as it applies to value of environmental decision-making that TxDOT would obtain from commission reviews of TxDOT projects. Concerning subsection (h) of the MOU, the individual felt that the MOU needed to define the term *good faith efforts* as the language applies to resolution of disputes between TxDOT and the commission.

The commission agrees with the spirit of ensuring that sound, good faith efforts are made in commission environmental reviews of TxDOT projects and the resolution of disputes, but disagrees with the need to change the MOU language. The words are in common use, but each situation will have to be resolved on the merits of the issue under discussion and the applicable laws and jurisdiction of each agency.

With regard to subsection (c)(1) of the MOU, an individual requested that the time for the start of construction be defined because without the definition, the decision when to start construction would be left open and subject to abuse.

The commission disagrees with this comment. The start of construction is not a critical element in the MOU. The MOU encourages TxDOT to submit the necessary environmental documents to TNRCC for review early in the project development process (subsection (e)(1)(A)) in order to consider the environmental issues associated with the project and to avoid or minimize impacts in a timely manner. TxDOT must comply with a significant number of regulatory-directed steps in the transportation planning process prior to receiving project approval. The commission, however, does not have regulatory jurisdiction over most of these steps. At a later stage, not addressed by the MOU, the commission does have regulatory approval over the various environmental permits and certifications associated with the project. Therefore, the commission does not believe that a definition for the start of construction is necessary.

In regards to subsection (d)(1)(A) and (D) of the MOU, an individual requested substitution of *possible* for *practicable* when TxDOT is attempting to avoid, minimize, or compensate for anticipated environmental impacts of transportation projects; and removing *when possible* as a modification to TxDOT's responsibility for preservation of the environment. In regards to subsection (e)(1)(A)(iii) of the MOU, the individual requested removal of the word *practicable* and substitution of the word *possible* when during TxDOT and TNRCC coordination on a transportation project, efforts are made to avoid and minimize impacts to environmental resources.

The commission disagrees with these comments. Statutory, financial, and jurisdictional constraints often prevent either TxDOT or TNRCC from prevention or mitigation of every possible environmental impact.

In regards to subsection (e)(1)(B), an individual felt that the language encouraging early coordination of projects between TxDOT District Offices and TNRCC Regional Offices should be eliminated because TNRCC Regional Offices are overworked and not specifically trained to handle TxDOT issues.

The commission disagrees with this comment; however the language describing the relationship between TxDOT District Offices and TNRCC Regional Offices has been changed to clarify the extent of these activities. The language will be amended to encourage TxDOT District Offices to contact TNRCC Regional Offices on local and regional environmental issues. In the event that the TNRCC Regional Office is unable to provide the requested information, TxDOT District Offices will be referred to the Central Office in Austin.

Concerning subsection (e)(1)(C) of the MOU, the individual requested removal of the words *when appropriate* when TxDOT and the commission are soliciting public input concerning plans and actions affecting environmental quality.

The commission agrees with this comment and has changed the MOU language.

Concerning subsection (e)(2)(A)(ii) of the MOU, the individual requested removal of the language *special requests by TNRCC*, as it applies to the requirement for TxDOT to furnish to the commission environmental documentation to evaluate air quality issues dealing with the construction of single occupancy vehicle projects on new locations and increased single occupancy vehicle highway capacity in major metropolitan areas.

The commission agrees with this comment and has changed the MOU language.

Concerning subsection (e)(2)(A)(iii)(I), the individual felt that the MOU must address CWA, §401 and §404 responsibilities.

The commission agrees with this comment and has added language to the MOU requiring projects with CWA, §401 certification to be sent to the commission for review.

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.104, which requires the commission to enter into an MOU with any other state agency to clarify and provide for their respective duties, responsibilities, or functions on any matter within their jurisdictions that is not expressly assigned to either agency; THSC, §382.017, and TWC, §5.103, both of which establish the commission's authority to adopt rules; THSC, §382.035, which requires the commission to adopt MOUs with other state agencies by rule; and TWC, §5.105, which establishes commission authority to set policy.

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
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.250

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.250, *Memorandum of Understanding with the Texas Department of Transportation*, without changes as published in the October 26, 2001 issue of the *Texas Register* (26 TexReg 8479).

The repeal of §114.250 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the repeal is to consolidate Memoranda of Understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT). The repeal will remove §114.250 and place the MOU on *Transportation Planning Issues: Control of Air Pollution From Motor Vehicles*, into a consolidated MOU with TxDOT in 30 TAC §7.119, *Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission*. The consolidated MOU will also address other topics such as water quality. A rule action for §7.119 is proposed in this issue of the *Texas Register*.

SECTION DISCUSSION

The repeal will consolidate references to MOUs with TxDOT in §7.119.

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 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, and it does not meet any of the four applicability requirements listed in §2001.0225(a). These four requirements are: 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. Elimination of the rule allows MOUs with TxDOT to be consolidated in one location. The repeal of §114.250 places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the repeal under Texas Government Code, §2007.043. The specific purpose of the repeal is to make it easier for the public and the two state agencies involved to understand the types of activities coordinated in order to prevent duplication of effort and clarify responsibilities. The repeal will advance this purpose by consolidating existing MOUs into one location (30 TAC Chapter 7, *Memoranda of Understanding*). Promulgation and enforcement of the repeal will not burden private real property which is the subject of §2007.043, because there is merely a repeal of an agreement among state agencies in order to support a consolidation at another location in the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.) and the commission's rules in 30 TAC Chapter 281, Subchapter B, *Consistency with the Coastal Management Program*.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this proposed rulemaking action is the policy that the commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area. Section 114.250 is repealed in order to consolidate planning MOUs with TxDOT in §7.119, and thereby implement within the state a portion of 40 CFR Part 93, which is protective of the air quality in the coastal area. Therefore, the rule is in agreement with the CMP policy governing air pollutant emissions. The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARINGS AND COMMENTERS

Proposals for this rule were published September 29, 2000 (25 TexReg 9863) and October 26, 2001 (26 TexReg 8496). Public hearings were previously held on October 24, 2000 and November 27, 2001. The comment period for the proposal of September 29, 2000 closed on November 13, 2000, and the comment period for the proposal of October 26, 2001 closed on December 3, 2001. One person attended the hearing held on October 24, 2000, and no persons were present at the hearing of November 27, 2001. No comments were received during either the hearing or comment period on the repeal of §114.250.

STATUTORY AUTHORITY

The repeal is adopted under Texas Health and Safety Code (THSC), §382.017, which establishes the commission's authority to adopt rules; and THSC, §382.035, which addresses the commission's authority to adopt MOUs with other state agencies by rule.

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

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Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-6087

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER N. ADOPTION OF MEMORANDUM OF UNDERSTANDING BY REFERENCE

30 TAC §305.521

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Subchapter N, §305.521, *Adoption of Memorandum of Understanding by Reference*, as published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8496).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the repeal is to consolidate memoranda of understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT). The repeal will remove §305.521 and replace the MOU on *Consolidated Permits, Water Quality Impacts From Certain Transportation Projects*, with a consolidated MOU which addresses other topics, such as air quality. The consolidated MOU will be adopted by reference in 30 TAC §7.119, *Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission*. Rule actions for §7.119 are proposed in this issue of the *Texas Register*.

SECTION DISCUSSION

The repeal will consolidate references to MOUs with TxDOT in §7.119.

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 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, and it does not meet any of the four applicability requirements listed in §2001.0225(a). These four requirements are: 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. Elimination of the rule allows MOUs with TxDOT to be consolidated in one location. The repeal of §305.521 places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the repeal under Texas Government Code, §2007.043. The specific purpose of the repeal is to make it easier for the public and the two state agencies involved to understand the types of activities coordinated in order to prevent duplication of effort and to clarify responsibilities. The repeal will advance this purpose by consolidating existing MOUs into one location (30 TAC Chapter 7, *Memoranda of Understanding*). Promulgation and enforcement of the repeal will not burden private real property which is the subject of §2007.043, because there is merely a repeal of an agreement among state agencies in order to support a consolidation at another location in the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201

et seq.) and the commission's rules in 30 TAC Chapter 281, Subchapter B, *Consistency with the Coastal Management Program*.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the regulatory action is consistent with the applicable CMP goals and policies. The CMP goals in 31 TAC §501.12 applicable to this proposed rulemaking action include in general all of the ten goals, but apply more specifically to §501.12(7): to make agency and subdivision decision-making affecting Coastal Natural Resource Areas (CNRAs) efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. Repealing §305.521 and placing a revised and updated MOU under §7.119 will improve the efficiency of addressing CNRAs when they are the subject of environmental documents processed under the MOU. All of the 18 policies contained in 31 TAC §501.14 have the potential of being addressed in environmental documents prepared by TxDOT and reviewed by the commission under the provisions of the MOU. Repealing §305.521 and placing a revised and updated MOU under §7.119 will also improve the efficiency of coordinated environmental review between the two agencies. The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARINGS AND COMMENTERS

Proposals for this rule were published September 29, 2000 (25 TexReg 9863) and October 26, 2001 (26 TexReg 8496). Public hearings were previously held on October 24, 2000 and November 27, 2001. The comment period for the proposal of September 29, 2000 closed on November 13, 2000, and the comment period for the proposal of October 26, 2001 closed on December 3, 2001. One person attended the hearing held on October 24, 2000, and no persons were present at the hearing of November 27, 2001. No comments were received during either the hearing or comment period on the repeal of §305.521.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.104, which requires the commission to enter into MOUs with other state agencies to clarify and provide for their respective duties, responsibilities, or functions; TWC, §5.103, which establishes the commission's authority to adopt rules; and TWC, §5.105, which establishes commission authority to set policy.

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
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.5

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §335.5, Deed Recordation of Waste Disposal. Section 335.5 is adopted *with change* to the proposed text as published in the February 1, 2002 issue of the *Texas Register* (27 TexReg 732).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 3355 amended Texas Agriculture Code, §201.026, to authorize the Texas State Soil and Water Conservation Board (TSSWCB) to develop and certify a water quality management plan for any agricultural or silvicultural land at the request of the landowner. The bill added §201.026(f) to the Texas Agriculture Code, requiring that a water quality management plan for the land on which animal carcasses will be buried must describe specific disposal management methods for the carcasses as well as burial site requirements. New §201.026(g) of the Texas Agriculture Code provides that a landowner who requests and complies with a water quality management plan that includes the required disposal management practices and burial site requirements is not required to record the burial of animal carcasses in the county deed records. Prior to the effective date of HB 3355 (September 1, 2001), a person who intended to bury agricultural waste was required by §335.5 to record in the county deed records certain information about the generator, location, and classification of the waste. The adopted rulemaking revises §335.5 to implement an exemption from deed recordation in accordance with HB 3355.

Although HB 3355 gives the option of obtaining a certified water quality management plan to owners of agricultural and silvicultural land, it is important to note that Texas Water Code (TWC), §26.302, as amended by Senate Bill (SB) 1339, 77th Legislature, 2001, requires a person who owns or operates a poultry facility to implement and maintain a water quality management plan for the facility that is certified by the TSSWCB under Texas Agriculture Code, §201.206. Senate Bill (SB) 1339 establishes a phased-in schedule for poultry facilities to submit plans for certification.

The TSSWCB adopted an amendment to 31 TAC §523.3, concerning water quality management plans to implement the provisions of SB 1339 in the January 4, 2002 issue of the *Texas Register* (27 TexReg 270). Additionally, the commission adopted revisions to 30 TAC §321.33(d), regarding facilities operating under certified water quality management plans, to add the phrase "including all poultry operations as described in TWC, §26.302" for consistency with SB 1339 provisions. The adopted amendment was published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1511). The commission anticipates no need for further rulemaking to implement the provisions of SB 1339.

SECTION DISCUSSION

The adopted amendment to §335.5 adds subsection (d) to provide an exemption from deed recordation for a landowner who disposes of animal carcasses on-site in compliance with a certified water quality management plan developed under Texas Agriculture Code, §201.026(f). This amendment is necessary to implement HB 3355, which exempts a landowner who requests and

complies with a water quality management plan that includes the required disposal management practices and burial site requirements from the requirement to record the burial of animal carcasses in the county deed records.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rule is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rule is to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. To the extent a landowner elects or is required, as is the case for poultry facilities, to seek and comply with a water quality management plan, this rule could protect human health and the environment; however, should the landowner of facilities other than poultry facilities not wish to seek and comply with a water quality management plan, the current potential requirement to deed record the burial of animal carcasses on the landowner's property is unchanged. Furthermore, the adopted rule does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the adopted rule does not exceed a federal standard, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, the adopted rule was not developed solely under the general powers of the commission, but was specifically developed to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. The commission invited public comment on the draft regulatory impact analysis determination, and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether the rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. The adopted rule will substantially advance this stated purpose by exempting a landowner from the requirement to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan.

Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rule does not affect a landowner's rights in private real property because this adopted rule does not burden, 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, the adopted rule exempts a landowner from the requirement to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. There are no burdens imposed on private real property under this rulemaking as the rule neither relates to nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Further, property value may be maintained or increased due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking is subject to the Texas Coastal Management Program (CMP). In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the rulemaking for consistency with the CMP goals and policies. The CMP goals applicable to this rulemaking are the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)), and the goal to ensure sound management of all coastal resources (31 TAC §501.12(2)). The CMP policy applicable to this rulemaking is the policy related to the construction and operation of solid waste treatment, storage, and disposal facilities (31 TAC §501.14(d)).

HB 3355 provides that a landowner who requests and complies with a water quality management plan that includes the required disposal management practices and burial site requirements is not required to record the burial of animal carcasses in the county deed records. The purpose of the rulemaking is to implement the exemption from deed recordation in accordance with HB 3355. Promulgation and enforcement of the adopted rule will not have a direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP. However, due to promulgation of the rulemaking, facilities that are not already required to have a certified water quality management plan may choose to request and comply with one in order to be exempted from the requirement to deed record, which should lead to increased compliance with state water quality rules at those facilities. Therefore, the rulemaking is consistent with the applicable goals and policy. The commission invited public comment on the CMP consistency determination, and no comments were received.

HEARING AND COMMENTERS

A public hearing was not held. One comment was received from the commission's Office of Public Interest Counsel (OPIC) suggesting changes to the rule.

RESPONSE TO COMMENTS

OPIC commented that, as drafted, the proposed rule is subject to a misinterpretation that would authorize a landowner to bury animal carcasses, thereafter obtain and comply with a certified water quality management plan, and then claim that the exemption somehow "related back" to before the burial. OPIC suggested revised rule language that it believes would ensure that it is clear that a landowner must already be operating in compliance with the water quality management plan that was developed and certified by the TSSWCB under Texas Agricultural Code, §201.026(f), if the landowner wishes to be exempt from the deed recordation requirements that would otherwise apply to an anticipated burial of animal carcasses.

The commission agrees with the comment and revised the rule to clarify that a landowner must first obtain a certified water quality management plan and then bury animal carcasses in compliance with the plan to be exempt from the deed recordation requirements.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from HB 3355, 77th Legislature, 2001, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan.

§335.5. Deed Recordation of Waste Disposal.

(a) Deed recordation of disposal of industrial solid waste or municipal hazardous waste. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place the following information:

(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;

(2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

(d) Exemption. A landowner who, at the time of disposal of animal carcasses on-site, complies with a certified water quality management plan developed for that site under Texas Agriculture Code, §201.026(f) (relating to Nonpoint Source Pollution) is exempt from the deed recordation requirements 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.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §§51.165 - 51.168

The Texas Parks and Wildlife Commission adopts new §§51.165-51.168, concerning Nonprofit Partners, Sponsorships, Employee Fundraising, and Youth-appropriate Advertising. Section 51.165, concerning Best Practices of the Official Nonprofit Partner (ONP), is adopted with changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10228). Sections 51.166-51.168 are adopted without changes and will not be republished. The change to §51.165 alters internal references cited in subsection (c) in response to public comment. The department intended only for the Official Nonprofit Partner to undertake an annual independent audit.

The new rules are necessary to comply with the provisions of Senate Bill 305, enacted by the 77th Texas Legislature, which require the commission to promulgate regulations governing best practices for nonprofit partners of the agency, guidelines for the solicitation and acceptance of sponsorships from private entities by the official nonprofit partner, guidelines for the solicitation and acceptance of gifts of greater than $500 in value by department employees, and the types of advertising appropriate for viewing by youth.

New §51.165, concerning Best Practices of the Official Nonprofit Partner, will function by establishing best practices criteria recommended by the Sunset Advisory Commission. The criteria will formalize the interactions among the agency, nonprofit partners, and the official nonprofit partner and standardize the policies and procedures used by each in cooperative furtherance of the agency's mission. The purpose of the proposed new rule is to more clearly separate agency functions from private functions, provide for greater public accountability, and prevent the potential perception that conflicts of interest might exist in the absence of clear guidance.

New §51.166, concerning Sponsorships, will function by establishing protocols for solicitation and acceptance of financial contributions on behalf of the agency by nonprofit partners in exchange for public recognition of the sponsors' involvement in furthering the mission of the agency. The purpose of the new section is to ensure that in the process of supporting and furthering the agency's mission, sponsorship agreements between the nonprofit partner and private entities do not either detract from the agency's mission or create the perception that the agency's legislative and regulatory obligations are in any way being compromised.

New §51.167, concerning Employee Fundraising, sets forth the requirements for solicitation and acceptance of gifts equal to or greater than $500 in value by department employees and department employees acting on behalf of a nonprofit partner. The purpose of the new section is to track and record the activities of publicly funded fundraising efforts to ensure that the agency is in compliance with S. B. 305.

New §51.168, concerning Youth-appropriate Advertising, limits advertising that is appropriate for youth viewing to those advertisements that do not include alcohol or tobacco products.

The department received one comment requesting that the rules be revised to prevent employees of Texas Parks and Wildlife from receiving scholarships awarded by the Official Nonprofit Partner (ONP) if the source of the scholarship is a sponsor or other entity doing business with the department. The commenter felt that conflicts of interest could arise. The department disagrees with the comment and responds that 1) it is a violation of state law (Penal Code, Chapter 36) for a public servant to trade on his or her influence, and 2) the ONP is a private entity that the department regulates under the narrowly circumscribed powers set forth by the legislature. No changes were made as a result of the comment.

The department received one comment pointing out that the proposed rules require sponsorship opportunities that include endorsements to be made available to the public, which would allow alcohol and tobacco products to be advertised. The department disagrees with the comment and responds that the regulation in question requires such sponsorship opportunities to be made available to the public, not that the endorsements be made available to the public. No changes were made as a result of the comment.

The department received one comment asserting that because the department regulates the use of alcoholic beverages on public waterways, the department would be in violation of the proposed rules, since the ONP is not allowed to accept sponsorships from any company or entity that is regulated by the department at the time of consideration. The department disagrees, and responds that it does not regulate the use of alcoholic beverages on public waterways and has no statutory authority to do so. Game Wardens, as commissioned peace officers, can and do enforce provisions of the Penal Code involving alcohol-related offenses, but that is not the same thing as regulatory oversight. No changes were made as a result of the comment.

The department received one comment stating that although the proposed rules require youth-appropriate advertising to be free of alcohol and tobacco products, the rules are vague as to implementation. The department disagrees with the comment and responds that the rule in question is quite clear. No changes were made as a result of the comment.

The department received one comment stating that although the department distributes a version of hunting and fishing regulations that does not contain advertisements for tobacco and alcohol products, the adult version of the publication is still available to minors. The commenter requested that the department remove all alcohol and tobacco advertising the publication in order to be consistent with policies governing youth-appropriate advertising. The department agrees with the commenter that the publication is readily available; however, the youth-appropriate version is intended for use in schools and hunter education classes. The rights to publish a summary of hunting and fishing regulations in the Outdoor Annual are the contractual property of a private company; however, that company currently furnishes a youth-appropriate publication. No changes were made as a result of the comment.

The department received one comment asserting that children are banned from outreach events sponsored by alcohol or tobacco interests, and that the exclusion of youth from outreach activities is unacceptable. The department disagrees with the comment and responds that under the regulations of the Texas Alcoholic Beverage Commission (16 TAC §45.106), a person must be of legal drinking age to enter a promotion sponsored by an entity affiliated with the alcoholic beverage industry. To be sure, children may attend and participate in such events, but are forbidden only from registering and being eligible to win prizes. The department made no changes as a result of the comment.

One comment voiced concern about the requirement that the Presiding Officer of the Parks and Wildlife Commission appoint a majority of the board. The comment was made by a member of the board of a smaller nonprofit. The regulation in question applies only to the ONP, and not to any other entity. No changes were made as a result of the comment.

Four commenters requested that smaller nonprofit partners be exempt from the auditing requirements of §51.165(d)(3). The department agrees and has made changes accordingly.

The rules are adopted under Parks and Wildlife Code, Chapter 11, Subchapter J, which requires the commission to adopt rules governing best practices for nonprofit partners of the agency, and guidelines for the solicitation and acceptance of sponsorships from private entities by the official nonprofit partner. The rules are also adopted under Parks and Wildlife Code, Chapter 11, Subchapter B, which requires the commission to adopt rules relating to guidelines for the solicitation and acceptance of gifts equal to or greater than $500 in value by department employees and the types of advertising that are appropriate for viewing by youth.

§51.165. Best Practices of the Official Nonprofit Partner (ONP).

(a) Composition of the board.

(1) The Presiding Officer of the Texas Parks and Wildlife Commission shall appoint a majority of board members.

(2) Current TPW employees will not be eligible to serve as voting members of the Board.

(b) General provisions. The official nonprofit partner (ONP) shall:

(1) adopt a conflict of interest policy that precludes board members from benefiting financially from any business decision of the ONP;

(2) publish an annual report each year and make it available to the general public; and

(3) make its current IRS 990 return, its annual audit, and a copy of its application to the IRS for exempt status available to the general public upon request.

(c) TPW employee involvement.

(1) No TPW employee shall hold a paid position with the ONP nor will any employee receive direct personal benefits from the ONP.

(2) The ONP may, however, reimburse TPW employees for legitimate, documented expenses. Additionally, the ONP may award scholarships to TPW employees from private, donor-directed sources.

(3) A TPW employee soliciting or accepting gifts or donations of equal to or greater than $500 in value on behalf of the ONP shall comply with the provisions of §51.167 of this title (relating to Employee Fundraising Activities).

(d) Accounting and Reporting.

(1) The ONP shall adopt financial procedures that govern acceptance of and access to:

(A) donor-restricted funds;

(B) unrestricted funds; and

(C) state funds. All state funds will be spent in support of TPW-established priorities.

(2) TPW employees shall not directly spend or obligate ONP funds. The ONP and its employees will control all expenditures.

(3) An independent accounting firm shall audit the ONP annually. A copy of that audit shall be sent to the TPW executive director. Any state funds received by the ONP shall be subject to audit by the State Auditor's Office.

(e) Compliance with state and federal requirements.

(1) Expenditures of state funds by the ONP for a TPW project shall meet all applicable state and federal requirements governing TPW spending.

(2) State funds held by the ONP shall be subject to investment according to Government Code, Chapter 2256. State funds held by the ONP shall be invested by competent investment professionals to yield the highest returns possible.

(f) Sponsorship. When consistent with the mission of TPW, the ONP may solicit and accept corporate sponsorships. The ONP shall follow the criteria set forth in §51.201 of this title (relating to Sponsorships) when seeking, accepting, and administering corporate sponsorships. Any interested party may submit a proposal for consideration. Sponsorship opportunities that include endorsements shall be made available to the public. All sponsorship proposals shall be given equal consideration.

(g) Lobbying. The ONP shall not use state funds to influence legislative action either by the ONP or by others funded by the ONP with state funds.

(h) Review. Not later than three years following the selection of an ONP by the commission, the commission shall assess whether the purposes for which the ONP was created still exist, if the ONP is serving those purposes, and if the ONP is still needed.

(i) The provisions of subsections (b), (c), (d)(1) and (2), and (e) of this section shall also apply to nonprofit partners as defined in Parks and Wildlife Code, §11.201.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 59. PARKS
SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §59.132

The Texas Parks and Wildlife Commission adopts an amendment to §59.132, concerning General Rules, without changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10241).

The amendment is necessary to ensure that equines entering state parks are free of a contagious equine disease, Equine Infectious Anemia, that could be transmitted to other equines.

The amendment functions by requiring persons who bring equines to a state park or allow equines to enter a state park to have evidence that the animals have been tested negative for Equine Infectious Anemia (EIA).

The department received 16 comments in favor of adoption of the proposed amendment, and no comments in opposition.

Greater Houston Horse Council, Trail Association of Ray Roberts, and Texas Equestrian Trail Riders Association commented in favor of the proposed amendment.

The rules are adopted under Parks and Wildlife Code, §13.102, which authorizes the commission to adopt regulations governing the activities of park users.

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 65. WILDLIFE
SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §65.190, §65.199

The Texas Parks and Wildlife Commission adopts an amendment to §65.190, concerning Application, and §65.199, concerning General Rules of Conduct, which are part of the Public Lands Proclamation, without changes to proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10241).

The amendments are necessary to ensure that equines entering public hunting lands are free of a contagious equine disease, Equine Infectious Anemia, that could be transmitted to other equines.

The amendment to §65.190 will function by allowing the amendment to §65.199 to have effect on certain federal properties. The amendment to §65.199 will function by requiring persons who bring equines to public hunting lands or allow equines to enter public hunting lands to have evidence that the animals have been tested negative for Equine Infectious Anemia (EIA).

The department received 16 comments in favor of adoption of the proposed amendment, and no comments in opposition.

Greater Houston Horse Council, Trail Association of Ray Roberts, and Texas Equestrian Trail Riders Association commented in favor of the proposed amendment.

The rules are adopted under Parks and Wildlife Code, §81.405, which authorizes the commission to adopt regulations governing recreational activities on wildlife management areas.

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

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.1 - 53.9, 53.11 - 53.14

The Teacher Retirement System of Texas (TRS) adopts new Chapter 53, §§53.1 - 53.9, and §§53.11-53.14, relating to certification by companies offering qualified investment products to employees of school districts or open-enrollment charter schools, with changes to the text of each section as published in the January 4, 2002, issue of the *Texas Register* (27 TexReg 110). The new sections establish certification requirements, maximum fees, costs, and penalties a certified company may charge, notice requirements, certification fees, and related implementation provisions as authorized under Senate Bill 273, Act of May 27, 2001, 77th Leg., R.S., ch 1229, §23, 2001 Tex. Gen. Law 2811, 2817 (to be codified at Tex. Rev. Civ. Stat. Ann. Art. 6228a-5). Proposed §53.10 relating to annual demonstration of licensure and training and §53.15 concerning additional requirements are being withdrawn is this same issue of the *Texas Register.*

Under the adopted new sections, companies that offer qualified investment products to educational institution employees after May 31, 2002, and expect to receive contributions or payments through a salary reduction agreement between the employee and employer will be required to certify to TRS that they meet applicable requirements. The new sections establish certification requirements for companies offering qualified investment products that are annuity contracts, as well as qualified investment products other than annuity contracts. They also establish maximum charges by a company to an employee. The new sections describe the process for a company to certify to TRS and the certification fee required. Also, the sections address the notice required to be provided to a potential purchaser of an annuity contract. Finally, they require TRS to maintain a list of certified companies, which is to be available on the TRS Web site.

TRS developed proposed rules after considering letters and comments that TRS received following enactment of SB 273, as well as the analysis of Watson Wyatt, a consultant with expertise in institutional 403(b) products and fees. The Policy Committee of the TRS Board of Trustees recommended that TRS publish proposed rules for public comment. The proposed rules were published, along with notification that a public hearing would be conducted to receive comments on the rules.

On January 23, 2002, TRS staff conducted a public hearing to receive comments. TRS also received written public comments before the comment period officially ended on February 11, 2002. TRS continued to receive public comment after the end of the official comment period. All timely comments were considered before adoption of the rules. Any comments filed after February 11, 2002, were considered to the extent feasible, even if not reflected in the discussion that follows.

General Comments on the Proposed Rules

TRS received comments from many interested business entities, organizations, and individuals, including teachers or other educational institution employees, educator organizations, school districts, insurance agents, insurers, financial planners, investment advisors, and securities brokers or dealers. In addition to the groups, organizations, or business entities identified by name, TRS received comments from individuals not identified as affiliated with any group or organization both for and against adoption of the rules, as well as for adoption with changes. TRS also received comments from some members of the Texas Legislature commenting on the legislative intent and proposed implementation of SB 273.

Groups, Associations, and Others for Adoption of the Rules: Association of Texas Professional Educators and Martin Drought & Torres.

Groups, Associations, and Others against Adoption of the Rules: Metropolitan Life Insurance Company; Donnell Financial Associates, Inc.; AXA Advisors, Inc.; Lincoln Financial Group; The Security Benefit Group of Companies; The Equitable Life Assurance Society of the United States; Zurick Life; SAFECO Life & Investments; David Huckin Associates, Inc.; Horace Mann Companies; Allen Bailey and Associates, Inc.; Texas Association of Insurance and Financial Advisors; Texas Financial; Dearborn & Greggs; Asset Planning Group; Gemini Estate Planning L.L.C.; Texas State Teachers' Association; Texas Association of Community Schools; SWS Financial Services; Wink-Loving Independent School District; Fort Stockton Independent School District; Mullen and Associates; First American Pension Services; Doug Massey Financial Services; Source Financial Services and Insurance/Educators Retirement Specialists, Inc.; Caldwell Independent School District; Allred-Thompson-Mason-Daugherty Insurance; Quantum Pension Services; and Veritrust Financial, L.L.C.

Groups, Associations, or Others for Adoption of the Rules with Changes or Whose Position Was not Specifically Identifiable as for or against Adoption: Texas Association of Life and Health Insurers; Fidelity Investments; VALIC; Life Insurance Company of the Southwest; Akin, Gump, Strauss, Hauer & Feld, L.L.P.; Combined Benefits Group; Aetna Investment Services, L.L.C.; United Teacher Associates Insurance Company; TCG Consulting; CMW Financial; CGU Life Insurance Company of America; TIAA-CREF; Ameritas Direct; Van Kampen Trust Company; The

Texas Retirement Trust; Katy Independent School District; Diversified Investment Advisors, Inc.; Aid Association for Lutherans; Securities Industry Association; Texas Department of Insurance; Mills, McCaghren & Associates; OFG Financial Services; Paul Moore Investments; Houston Independent School District; Combined Benefits Group, Inc.; and NEA Member Benefits.

·The principal reasons cited in support of the proposed rules are:

·Protection of the interests of public school employees by preventing their accounts from being eroded by unreasonable, excessive fees

·Reduction in charges to employees, with positive impact on potential investment returns

·Shorter surrender period that would enable employees to move assets more freely

·Establishment of standards for certification of 403(b) companies, including financial and ethical standards

·Mandatory disclosure of fees and other terms in annuity contracts

·Curtailment of abuses that led to lawsuits over some 403(b) products

·Creation of a more competitive environment for investment products, particularly those that do not rely on on-site sales force

·Greater competitive opportunity for companies that provide high-quality, more neutral investment information to employees, instead of information influenced by commissions and supported by high fees

·Central TRS listing of certified companies with employee choice among all certified companies; potentially higher participation rates because of greater employee confidence

In general, TRS finds the rules as adopted will have the results identified by comments in support of the proposed rules. TRS finds that the rules will protect employees against excessive fees, will establish basic standards for companies to certify to TRS, and will establish disclosure requirements through use of a form notice when an annuity product is sold to an employee. The rules also will allow a sufficient choice of products, will permit competition by different kinds of companies and products, and will permit reimbursement to certified companies or their representatives for services such as investment advice to employees or administrative services to the school districts.

Some comments supported the rules as proposed on the grounds that the fees and surrender periods would afford appropriate employee protection, and they urged that the fee caps not be increased. However, TRS also received comments objecting to the disallowance of certain fees entirely, such as annual fixed administrative fees or sales loads, and objecting to the low level of other fees on the grounds that they would be too low to support a sales force that provides face-to-face information. These comments generally stated that the proposed fees would eliminate too many companies from eligibility for certification, and they would restrict employee choice too severely. TRS agrees that low fees protect employees against erosion of returns on their investment dollars. TRS also agrees that the lower the allowable fees, the fewer companies and products that will be available to the educational institution 403(b) market. Additionally, lower fees generally mean less in-person contact, which some employees prefer when making investment decisions. Finally, companies have a legitimate business need to cover costs associated with offering products in a multi-employer environment in which they deal with more than 1,000 separate payroll entities.

Based on all of these factual considerations, TRS finds that it is appropriate to balance the employee protection afforded by low fees with considerations such as employee choice and the potential impact on availability of services to employees. TRS finds that increasing the proposed fees is appropriate considering the likely impact of the proposed fee provisions on choice, competition, and services. Therefore, TRS disagrees with comments that the proposed fee caps should be adopted without any changes.

Finally, with respect to the comments in support of the rules on the basis that they would increase employee confidence because of TRS involvement, TRS notes that it would be incorrect to construe these rules or certification of companies under these rules as any TRS endorsement, approval, or recommendation of either a company or its investment products. Through this chapter, TRS has established a certification process for companies and will establish a list of certified companies on its Web site, as required under SB 273. Placing the name of a company on the TRS Web site list does not indicate TRS approval of a company. Instead, as the certification procedures of this chapter demonstrate, certification is based on a company's own, unilateral determination that it meets the requirements for certification. Additionally, the maximum fees established in this chapter should not be construed as reasonable charges for all qualified investment products. The fees in this chapter are the very highest amounts a company may charge; the maximum charges are designed to allow employee access to a wide variety of products, services, and features. Employees still must exercise diligence in determining which investment products are right for them and what fees are reasonable for the qualified investment product they may purchase.

·TRS also received comments objecting to the proposed rules or to certain features of the proposed rules. The principal reasons cited in opposition to the proposed rules are:

·Potential reduction in number of companies offering 403(b) products to employees

·Potential reduction in revenues from which commissions are paid to insurance agents, securities broker-dealers, or investment advisors

·Potential impact on commissions, inconsistent with the legislative intent of SB 273

·Prohibition on fees such as sales loads, inconsistent with the legislative intent of SB 273

·Potential reduction in access to personal financial advice because of decreased fee revenues, potentially resulting in lower participation rates by employees

·Potential impact on investment returns available under fixed annuity contracts because of short surrender charge period

·Potential impact on employees' investment returns because of lack of access to full range of investment options, including products carrying a sales load or fixed annual fee

·Restrictions on employees' choices of investments made with their voluntary contributions

·Absence of any provisions for investor education or for a master custodial agreement

·Absence of provisions specifically addressing broker-dealer or investment advisor relationships with employees or school districts

TRS modified the proposed rules in response to some of the reasons urged against adoption of the rules. To the extent TRS did not modify the proposed rules in response to reasons cited against adoption of the rules, TRS overrules the considerations urged against adoption of the rules for the following reasons indicated.

Delay of regulation. Some comments urged TRS to delay implementation of any regulations that might disrupt the 403(b) market until further study of industry fees. TRS disagrees and finds that such delay would be inconsistent with the requirements of SB 273. As of June 1, 2002, companies are required to be certified in order to offer new qualified investment product contracts to school employees using payroll reduction agreements for their contributions. Additionally, the Legislature specifically required TRS to establish certification criteria, including consideration of the administrative costs to employees for qualified investment products other than annuities and setting maximum fees, costs, and penalties for annuity products. Therefore, TRS finds it is necessary to establish certification standards and procedures, including maximum charges, before June 1, 2002.

Deference to TDI regulation of annuity companies. Some comments suggested that TRS refrain from adopting regulations on fees and charges and instead defer to Texas Department of Insurance (TDI) regulation of annuity companies. One comment specifically noted that under art. 3.42, Insurance Code, all annuity contract forms must be submitted to TDI for approval. TRS disagrees because deferring to TDI regulation would inconsistent with TRS's specific responsibilities under SB 273, which requires TRS to establish certification standards, including maximum fees, costs, and penalties. SB 273 imposes additional requirements on annuity companies that market qualified investment products likely to be the subject of educational institution employee salary reduction agreements. If an annuity company does not market such products, then it is not subject to Chapter 53 but instead is generally regulated by TDI. Because of the requirements of SB 273, TRS finds that it may not defer to TDI's general regulation of annuity companies or their contracts.

Impact on availability of investment products and employee choice. Some comments objected to the rules on the grounds that the fees would be too low to allow availability of a wide range of products, and the allowable fees would prevent access to any investment products with sales loads or fixed administrative fees. More specific comments about fees are addressed under §53.3. The rules have been revised to establish maximum fees, costs, and penalties that will be less restrictive and thus will eliminate fewer companies or products, but that still will prevent companies or products with excessive fees from participating in the market.

Some comments objected to the rules on grounds that they would be inconsistent with free enterprise and that TRS should not restrict how employees invest their own personal, voluntary investment contributions. TRS disagrees to the extent the comments advocate no regulations whatsoever. Access to school employees at work by sales forces and the availability of salary reduction agreements as a source of investment contributions support the establishment of basic standards for companies who benefit from such opportunities. TRS finds that employer limitations on the number of companies eligible to receive similar tax-deferred, voluntary investment contributions, such as contributions to 401(k) or 457 plans, are common. Further, TRS notes that the requirement to establish certification criteria, including maximum fees, is statutory. Finally, TRS finds that the fee limitations have been changed in response to comments to ensure that employees have access to a variety of products.

Impact on agent or broker-dealer commissions. Several comments maintained that the legislative history of SB 273 shows that agent commissions were not to be *impacted* by TRS regulations. The comments said that the rules would impact agent commissions because the allowable fees would be too low, and they would completely eliminate some sources of commissions, such as sales loads. The comments consider the impact to be contrary to legislative intent.

TRS disagrees with this analysis of the legislative history of SB 273 because the House and Senate floor comments clarified that TRS is not authorized to directly regulate commissions or to supersede the negotiated payment by a company to an agent. Consistent with the intent of SB 273, Chapter 53 does not regulate commissions, nor will it supersede any existing, negotiated agreements between a company and its agents. First, existing company-employee contracts for qualified investment products are grandfathered if they meet the requirements of SB 273, Section 31, and these contracts presumably impose charges that provide the revenues to support the negotiated commissions a company has agreed to pay its agents for sale of the particular product. The rules do not affect the charges to employees in grandfathered contracts nor the division of the revenues resulting from those charges. Second, for contracts that are not grandfathered, the rules establish the maximum charges that may be deducted automatically by companies from employee payroll reduction contributions (or accounts established with such contributions). The rules do not regulate how the companies and their representatives may divide the revenues resulting from those charges. Therefore, the rules are consistent with both the expressions of legislative intent and with the express language of the law authorizing TRS to establish maximum fees, costs, and penalties as a requirement for certification.

Several comments said there is a direct connection between revenues (generated from fees charged to customers) and the level of commissions companies may pay agents or broker-dealers. The comments maintained that fee regulation would have an impact on commissions, in contravention of legislative intent. As noted in the previous paragraph, TRS disagrees with this interpretation of the legislative intent of SB 273. Further, TRS finds that commissions are the subject of negotiation and agreement between companies and their representatives. Even if there is some relationship between fees charged to employees and commissions received by representatives of the companies, TRS nevertheless is directed by SB 273 to establish maximum fee levels. Doing so involves consideration of a number of factors, not just potential impact on commissions.

TRS revised the proposed rules to permit higher surrender charges and a longer surrender period, to allow annual fixed fees, and to allow sales load charges, as well as to increase the maximum annual percentage charge applied to accounts. TRS finds that these changes sufficiently address the concerns about impact on commissions because they will allow greater fee-based revenues from which agents or representatives may be compensated for their sales efforts on behalf of companies and for services to customers.

Impact on access to financial advice. TRS received comments expressing concern about the impact the proposed regulations

might have on the availability of face-to-face financial advice to employees from insurance agents, broker-dealers, and investment advisors. According to the comments, reduction in fees would reduce financial incentives to provide one-on-one service and advice. Some comments expressed a desire to continue to receive this kind of service.

TRS received comments contradicting the predicted loss of personal service to employees as a result of the proposed fees. One comment questioned the quality of financial advice given when company representatives are compensated on a commission basis for selling a company's products. The comment indicated this model of financial advice does not need to be protected by the rules. According to this comment, other companies, such as direct marketing companies, who do not use the same sales incentives, provide high quality investment advice and information through professionally trained staff delivered through toll-free telephone numbers or the Internet.

TRS agrees that there are different modes of delivering services, including financial advice. Because participating in 403(b) investments is voluntary, employees should be able to choose among a variety of products and service modes. TRS has modified the rules to permit a fee structure that would support the agent-based delivery system as well as the direct marketing model. Under the rules, an employee may choose to pay higher fees if one-on-one, in-person service from a commissioned agent or broker-dealer is desired, or the customer may choose investment products with lower fees but no in-person service. The adopted fee caps, when compared to those for other institutional voluntary investment programs, are sufficient to permit the delivery of financial advice through person-to-person contact. Further, the rules do not prohibit a financial advisor from receiving compensation directly from an employee, on a fee for service basis, instead of through a deduction from the employee's payroll reduction agreement contributions.

Impact on investment returns. Some comments expressed concern about potential impact on investment returns, based on two aspects of the proposed rules. First, some comments said that a surrender period of only six years is too short to permit insurance companies to make higher-yielding underlying investments and thus could affect guaranteed returns payable to employees. They proposed lengthening the period to prevent an adverse impact on guaranteed returns. Second, some comments noted that fee restrictions that limit the number of companies or products available to employees could have an impact on an employee's ability to diversify an investment portfolio and thus have an adverse impact on returns. TRS notes there was insufficient information to show the degree of linkage between companies' investment earnings and the returns guaranteed to customers in annuity contracts. TRS agrees that the lower the allowable fees, the fewer the number or companies that may certify, but disagrees that the certification requirements are so stringent that an employee's ability to diversify a portfolio would be affected. Nevertheless, because of a number of considerations raised in comments, TRS has made changes to the fee provisions, including lengthening the surrender period from six years to twelve years, which will address these specific concerns.

Absence of provisions on employee education or master custodial agreement. TRS received general comments stressing the importance of investor education and noting the confusion and administrative burdens that will continue to be caused by a large number of companies operating in each separate school district. One comment proposed that TRS's approach be educational, not regulatory, and that development of a master custodial plan would be one of the most beneficial uses of TRS resources. The comment also noted that certification criteria based primarily on fees could lead to claims that TRS did not properly exercise fiduciary responsibility in reviewing companies or products.

TRS agrees that investor education is important. TRS also agrees that a large number of companies may be eligible to certify and that school districts may, under SB 273, face challenges in coping with a large number of certified companies to which employees wish to direct payroll deductions. However, TRS finds it is beyond the scope of the proposed regulations and beyond the scope of TRS's responsibilities under SB 273 to address investor education or a master custodial agreement. For this reason, the rules do not address these issues. With respect to the comment regarding fiduciary responsibilities, TRS does not agree. TRS will not hold the investment funds on behalf of the employees; creating certification requirements in compliance with SB 273 does not establish a fiduciary relationship between TRS and the employee. Additionally, TRS disagrees that the certification criteria are primarily fee based; they are based on experience, financial strength, regulatory history, and other factors, as well as compliance with fee caps.

Absence of provisions on broker-dealers. Some comments requested that the rules be modified to specifically address managed investment accounts (MIAs) whereby an investment advisor or broker-dealer may be designated to receive an employee's payroll contributions and then would allocate the contributions to different companies based on the employee's investment objectives. The comments requested that the rules specifically allow for this kind of arrangement and establish fees that may be deducted from the employee's contributions to compensate the financial advisors for their services. TRS agrees that such arrangements currently are in use but does not agree that the rules should be modified as requested. Under Texas Revised Statutes, Article 6228a-5, §5(e), an employee is entitled to designate any agent, broker, or company through which a qualified investment product may be purchased or contributions made. TRS finds it unnecessary to provide regulations expanding on the statutory language. With respect to fees, TRS has modified the fee provisions to delete the descriptions of specific asset classes and the list of fees specifically associated with each class. Instead, the fees as adopted include an annual 2.75 percent charge, based on the account value, which permits more flexibility for companies to compensate representatives for their services to customers, including investment management services. As long as all charges by a company do not exceed the fee totals, this chapter does not prohibit an investment advisor or broker-dealer from receiving payment from the company for investment services.

Other general comments and general revisions. One comment proposed that a company be required to enroll at least five employees before an educational institution is required to add the company to the list of approved companies. TRS disagrees with the proposal. The creation of a local list of approved companies, based on a minimum number of participating employees, is beyond the scope of this chapter and beyond the scope of TRS's responsibilities under SB 273.

Some comments stated that the certification process and thorough disclosure were more appropriate means for protecting customers against a few bad companies or products than establishing unrealistic fees caps. Though TRS agrees that disclosure and certification requirements are important, SB 273

specifically requires TRS to consider charges to employees as a certification criterion. Further, because fees have an impact on the value of an employee's investment, TRS finds that establishing maximum charges is an important means of protecting employees' interests.

TRS received comments formally objecting to the absence of forms and notices referred to in the proposed rules. The comments expressed concern that after adoption of rules TRS might promulgate forms that contain substantive training and licensing requirements for company representatives, in violation of due process and the Administrative Procedure Act. TRS disagrees that such forms and notices are required by law to be promulgated with proposed rules. It would be administratively burdensome to treat agency forms and notices as subject to the formalities of rulemaking. Doing so would result in significant cost and delays and would reduce flexibility to respond to changing circumstances. Further, TRS intends to promulgate a form consistent with the statutory requirements.

TRS received comments expressing concern about the absence of a "knowledge" requirement in the violations described in Article 6228a-5, §10. TRS declines to address this matter in this chapter because TRS does not have authority to change the elements of a criminal offense as described in statute.

Finally, even if no comments were received on some provisions, TRS changed some text to improve clarity and consistency of language. Such changes were minor and caused no substantive change in meaning. Throughout the chapter, text has been revised to use a standard reference to "TRS" instead of "the retirement system." This change was made to be consistent with on-going efforts to standardize references in TRS rules.

Comments on Specific Sections

§53.1. Definitions.

TRS received comments proposing addition of several new definitions. TRS agrees that certain additional words or terms should be defined to clarify applicability of the rules.

TRS added a definition of "annuity or annuity contract" as recommended by comments. The definition clarifies that an annuity product must be a qualified investment product, as that term is defined by SB 273 and this section, and meet the requirements of applicable insurance laws and rules. The definition also addresses a comment that under securities law, a fixed annuity is not considered an "investment." The comment requested clarification of applicability of the chapter to fixed annuities. The definition clarifies that, for purposes of this chapter, a fixed annuity may be a qualified investment product.

TRS added a definition of "certified company" to clarify the term as used in this chapter. Though the definition is similar to one proposed by comments, TRS finds it is unnecessary to include a requirement that a company selling annuity contracts be an "insurer" because both SB 273 and this chapter require that a company offering annuity contracts be authorized to issue such contracts in the State of Texas. Under applicable insurance laws, the entity would need to be an insurer.

TRS modified the definition of "certify" to better reflect the process by which certification is to be reflected.

TRS added a definition of "company" as proposed by comments to clarify that the entity with primary liability for the performance of the obligation, such as the mutual fund company or the insurer, is the "company" that is required to certify. A representative, such as an insurance agent or broker-dealer, generally would not be considered a "company."

TRS added a definition of "contract" to clarify that, as used in the chapter, the word applies to an agreement through which an employee purchases a qualified investment product, including an annuity certificate evidencing participation in a group annuity contract.

Though no specific definition was proposed, comments suggested that the word "person" as used in §53.9 (requiring a "person" who offers to sell an annuity contract to provide notice as required by law) is unclear. TRS disagrees and finds that this same term is used in SB 273 with respect to notice and that the meaning of the word is self-evident. By choosing the word "person" instead of "company" or "representative," SB 273 imposes a broad notice requirement that applies to any person who offers to sell an annuity contract that may be the subject of a salary reduction agreement.

TRS modified the definition of "representative" to clarify that, when required by applicable law, a representative must be licensed or registered. TRS does not find it necessary, as comments proposed, to modify the definition to clarify that broker-dealers need not be certified. The clarification provided by the addition of the definition of "company" is sufficient.

TRS added a definition of "specialized department" to clarify that a company may provide 403(b) services through an affiliate and still meet certification requirements.

Some comments requested definitions that TRS does not agree are necessary. TRS declines to add a definition of "administrative cost." The comment requested that TRS define the term in order to state that certain charges or fees are not administrative costs. For example, the proposal requested that the term be defined as "costs for the administration, purchase or sale of qualified investment products other than annuity contracts" and that the rules exclude sales loads, fees collected to pay or offset a commission, or a fee paid for investment advice. TRS disagrees because the definition would define administrative costs too narrowly. Under SB 273, TRS is authorized to establish reasonable certification requirements, including but not limited to the "administrative costs to employees." Under this provision TRS is authorized to consider all costs assessed against employees' payroll reduction contributions and accounts established through those contributions.

TRS also declines to add a definition of "managed investment account." The term is not used in SB 273 or in this chapter. Further, for reasons explained in more detail in response to comments under §53.5, TRS does not find it necessary to address managed investment accounts; thus, adding a definition is unnecessary.

TRS also finds it unnecessary to add definitions of the terms "broker-dealer" and "investment advisor." The terms are not used to any significant degree in this chapter. Further, the definition of "company" clarifies that the entity with primary liability for the investment product must certify to TRS. No additional clarification is needed to establish that a broker-dealer or investment advisor generally is not required to certify.

§53.2. Applicability.

53.2(a)

One commenter requested clarification of whether the rules apply to the Optional Retirement Program (ORP), described at Title

8, Subtitle C, Chapter 830, §830.002, Government Code. ORP is available at state-supported institutions of higher education. It is unnecessary to add clarification in the text of this section because the definition of "educational institution" in both §53.1 and SB 273 indicates that only school districts and open-enrollment charter schools are "educational institutions" for purposes of this chapter

53.2(b)

Another comment requested clarification about the applicability of the chapter to a group annuity contract issued by an insurer to an employer in 1990 as a funding vehicle for its Section 403(b) program, under which employees sign enrollment applications but have no individual annuity contracts issued. TRS finds that because group annuity contracts are in use, clarification is necessary. Though such a group contract may be grandfathered with respect to employees already enrolled, under Section 31 of SB 273 TRS finds that newly enrolling an employee in a group contract after May 31, 2002, establishes a new contractual relationship between the company and the employee. Thus, such a contract, typically evidenced by an annuity certificate, is not grandfathered. The rule text has been clarified consistent with this analysis.

Comments requested clarification of grandfather protection of contracts entered into before June 1, 2002. For example, an employee may have interrupted contributions to an investment product for a number of reasons, and the number of accounts an employee opened before June 1, 2002, could have been affected by a number of circumstances, such as changes in employment. The comments noted that if an employee wishes to continue salary reduction contributions to previously opened accounts, the employer possibly will not permit the employee to do so if the company's name is not on the TRS list of certified companies. The comments proposed that TRS draft a standardized form to be signed by the employee and provided to the employer to verify that the accounts were established prior to June 1, 2002. TRS agrees that such circumstances may exist and that some clarification of the grandfather provisions of law would be helpful. TRS has added new subsections 53.2(c) and (d). However, TRS does not agree that TRS should promulgate a form for the employee to verify to the employer that the contract is grandfathered. Under SB 273, it is the employer that will decide whether to enter into a salary reduction agreement with an employee who wishes to direct contributions to a particular company. Therefore, it is the employer who should make the determination of whether a contract is grandfathered.

§53.3. Maximum Fees, Costs, and Penalties on Annuity Contracts. 53.3(a)

To simplify the regulations, TRS has combined the fee provisions relating to qualified investment products that are annuity contracts (§53.3) and the provisions relating to qualified investment products other than annuity contracts (subsections 53.5(c) - (e)). The title of §53.3 has been modified to omit the reference to annuity contracts, and subsection 53.3(a) has been modified to reflect the change in applicability of the section. Additionally, TRS has modified the section to permit, as maximums, a six percent sales load, an annual fixed fee of $50, an annual charge of 2.75 percent, a surrender charge of ten percent to terminate within 12 years, and a loan initiation fee of no more than $50. These maximum charges are established under the direction of SB 273 to establish certification criteria, including maximum charges and administrative costs to employees. TRS finds that because charges generally erode investment returns or impose restrictions on employee ability to move investment dollars as desired, maximum fee caps are appropriate.

TRS received comments proposing that in addition to the charges allowed in this section, TRS should permit short term trading fees. TRS disagrees because the allowable fees provide a sufficient source of revenues for companies to cover costs associated with any short term trading that may occur. Further, at this time there is insufficient information to show such fees should be allowed in order to avoid making companies who charges such fees ineligible for certification. From the comments received, TRS finds that this is not an area of concern for a large number of companies.

One comment proposed that TRS establish maximum fees, costs, and charges for cash-value life insurance policies, which the commenter described as a third investment vehicle available to participants in 403(b) plans. TRS disagrees because to the extent such policies are not annuity contracts but do meet the requirements for a qualified investment product, the policies are subject to provisions applicable to such products. If the policies do not meet the criteria for a qualified investment product, then under article 6228a-5, the policies may not be purchased through salary reduction contributions, and establishing maximum charges for such policies would be beyond the scope of this chapter.

TRS received comments proposing that a loan fee be permitted and comments requesting clarification of whether in addition to such a fee, a company would be permitted to charge interest on a loan. TRS agrees that loans are common features on some qualified investment products and that establishing a maximum initiation fee is appropriate because there are costs associated with processing loan applications. A maximum loan fee has been established in subsection 53.3(g). This subsection also clarifies that a company may charge interest in addition to a loan initiation fee.

Many of the comments on proposed §53.3 also were made on subsection 53.5(e), maximum charges by certified companies that offer qualified investment products other than annuity contracts. The TRS analysis of §53.3 comments also applies to similar comments made on subsection 53.5(e).

53.3(b)

The subsection has been modified to clarify that the section does not establish the amount of commission a *certified* company may pay a broker, agent, *or other representative.* The changes make the provisions more inclusive.

TRS received comments that this subsection is not accurate because the fees provided for in the proposed rules would eliminate or greatly reduce the revenue stream that is the source for broker or agent commissions. TRS disagrees because the rules do not establish commissions payable by a company. For more discussion, see the general comments.

One comment stated that a change in surrender charges and schedules would directly correlate to the compensation paid to an agent in connection with the sale of the product. The comment suggested that reduction in compensation to agents would lead to less personal involvement by agents in 403(b) investment decisions of employees and possibly less participation. One comment noted that surrender charges are not normally triggered in the 403(b) market; thus, charges that may seem high are not frequently imposed.

TRS does not agree that reducing surrender charges and schedules will necessarily lead to reduction in employee participation. Employees may access independent financial advisors for information about 403(b) investments. They also may access advice from toll-free numbers and the Internet, available from companies that do not use commissioned agents. Further, TRS finds that the precise relationship between surrender charges and commissions was not established. If such charges are not frequently incurred in the 403(b) market, then it is not clear how a reduction in the charges called for in an annuity contract, but rarely incurred, will reduce agent commission. TRS finds that based on the comments, reduction in maximum allowable surrender charges is not likely to reduce agent commission to a level that will cause personal service by agents to disappear.

53.3(c)

Some comments objected to subsection 53.3(c), as well as to the corresponding provisions of subsection 53.5(c)(1), because they would prohibit sales load charges entirely. Generally, the comments said that the prohibition on sales loads would eliminate financial information and advice from salespersons compensated through such loads and would restrict customers' choices of products. Some comments objected on the grounds that TRS has no legal authority to entirely prevent certain fees, but only authority to establish maximums. Some comments interpret SB 273 as implying the authority to set "reasonable" fees. Some comments maintained that SB 273 implicitly authorizes sales loads because in the disclosure requirements, the amount of any up-front or deferred sales charges is required to be disclosed.

TRS does not agree with the comments regarding lack of legal authority to prohibit certain fees; the authority to establish maximum charges necessarily implies the authority to determine that certain fees, charged in addition to other allowable fees, would result in excessive charges in the aggregate. TRS agrees that the disclosure requirements of SB 273 seem to assume that certain fees or charges would be allowed. TRS finds that the disclosure requirements, when coupled with the potential impact on availability of products to employees, support permitting sales loads to be charged. Sales load charges would provide a revenue source for commissions that are incentive for agents and brokers to market to educational institution employees, including in small or rural school districts.

TRS based the 6 percent sales load provision on comments that showed loads are permitted to be as high as 8.5 percent under federal securities law but that most sales loads on 403(b) products are no higher than six percent. TRS finds the 6 percent cap on sales loads sufficient to allow employee choice of products.

53.3(d)

TRS received comments requesting that an annual fixed dollar fee be allowed. Some comments indicated it could be more cost-effective for some investors if a company could choose to apply a fixed dollar fee instead of an annual percentage fee based on account value. Another comment proposed that the term "fixed dollar fee" be defined in the rules for clarification.

TRS agrees that a fixed annual fee should be allowed because a fixed fee provides a possible alternative to annual percentage charges that increase in absolute dollar amounts as an investor's account increases. TRS also agrees that a description of the term would be helpful and has included one similar to a description provided in comments.

The cap of $50 annually for fixed fees is based on comments that show such a level would not disqualify a large number of companies from certification and thus would ensure a greater choice of products to employees. A fee of $35 to $50 is common; TRS finds that the $50 level will not be excessive.

53.3(e) and (f)

TRS received comments proposing that the allowable annual percentage charges be increased for different asset classes in order to make a wider variety of products available to employees. Some commented that the allowable percentages were too low to permit adequate company compensation for services, adequate agent or broker/dealer compensation, personal counseling, sales meetings, and investment advice. Additionally, some comments noted that the marketing and administration of qualified investment products to educational institution employees requires higher charges than proposed by TRS because the market is very decentralized (over 1,000 payroll entities), very large geographically, and has lower average contribution amounts than other comparable markets, such as higher education. Some comments also suggested clarifications or additions to the asset classes in order to establish allowable fees for specialty or lifestyle funds. Other comments supported the fees as proposed because they would eliminate high expense products from being sold to employees.

TRS agrees that modification of the allowable charges is warranted. The fees as proposed would eliminate too many investment products or companies. Several comments requested preservation of employee choice of products and services, and TRS agrees this is important in a voluntary investment program. TRS also agrees that the proposed fee structure did not address specialty funds or blended accounts, and the application of the allowable percentages to different asset classes in a portfolio would be somewhat confusing and restrictive. TRS agrees with the comments regarding the features of the educational institution market that make it more difficult and expensive to serve compared to more centralized employment situations, such as higher education 403(b) programs.

To address these concerns, TRS has adopted one maximum annual percentage charge for all assets in an employee account, instead of different maximum percentages applicable to different asset classes. This will give companies flexibility to set appropriate fees, within the maximum, based on the asset mix in an account. The maximum of 2.75 percent annually is based on the addition of 125 basis points to the highest percentage of 1.5 percent proposed for the international or global equity asset class. The addition of 125 basis points will permit compensation for costs such as mortality and expense risk, account management, personal investment advice, and administrative expenses associated with a multi-employer, multi-payroll, geographically large market. The percentage was established at a level that also would permit managed investment accounts to continue to exist and to compensate investment advisors or broker-dealers for their services to the employees and to the companies. TRS finds that the 2.75 percent charge, in combination with other charges allowed under the rules as adopted, is flexible for both employees and companies and strikes an appropriate balance between companies' need to cover expenses and the intent of SB 273 to protect employees from the erosive effect of high fees on long-term returns. Increasing the allowable percentage above 2.75, as proposed by some comments, is not warranted in light of other fee adjustments made in the adopted rules.

53.3(g)

Many of the general comments previously described were received in response to the proposed provisions capping surrender charges at 6 percent, to terminate within six years of contract inception. The general comments regarding impact on agent commissions, potential impact on guaranteed returns to employees, impact on availability of products, potential impact on access to investment information and advice, and proposals to delay regulation or defer to TDI regulation have been addressed as part of the general comments.

Additionally, comments noted that the six-year surrender period is inconsistent with Article 6228a-5, §11(c)(2)(F)(iv), which implies that contract restrictions in excess of ten years would be permissible. TRS agrees that the notice provision of the statute implies that a restriction longer than ten years would be permissible if disclosed. For this reason, TRS has adopted a twelve-year maximum surrender period. This change also addresses concerns about potential impact of a shorter period on a company's ability to make underlying investments with higher returns, which could affect the returns guaranteed to employees.

Some comments identified the role of surrender charges within a policy as to dissuade policyholders from withdrawing their retirement savings prior to retirement, as well as to mitigate a company's expenses if policy values are withdrawn before the carrier is able to recoup the cost of setting up a new policy. Comments noted surrender charges discourage "twisting," in which an agent encourages an employee to surrender a current annuity policy in order to sell the employee a new one and earn a commission on the sale. TRS agrees that surrender charges are used to cover company expenses upon premature withdrawal. However, other comments showed that insurers expect to be able to cover such expenses with surrender charges of no more than ten percent. As for discouraging withdrawals, TRS finds that the federal tax code imposes an additional tax of ten percent when tax-deferred investment dollars are withdrawn before retirement. The federal tax code, coupled with a surrender charge of no more than ten percent, provides sufficient discouragement to early withdrawal. Higher surrender charges are unnecessary to achieve this purpose.

Some comments proposed that instead of the six percent, six-year maximums proposed for surrender charges, TRS should apply the Standard Non-Forfeiture Law for Individual Annuities (Texas Insurance Code, Article 3.44b) to all annuity contracts, including exempt group annuities. TRS disagrees because if the Legislature had intended that the non-forfeiture law be applied to all annuity contracts as a means of establishing appropriate fee caps, then Article 3.44b could have been amended to make it applicable to group annuity contracts. However, the Legislature chose not to do so but instead directed TRS to establish fee caps appropriate for certified companies marketing annuity products to school employees. Further, insurance companies that market annuity products to employees of educational institutions have access to employees at work for marketing purposes and may receive regular premium payments through payroll reduction agreements. The tax benefits to employees who purchase annuities through a 403(b) program also provide such companies an additional marketing point, while the federal tax code provisions provide additional deterrence to early surrender. These considerations justify lower surrender charges than the non-forfeiture provisions of Article 3.44b.

Some comments supported the proposed surrender charges because they would allow good products to be offered but would eliminate poor products. While TRS agrees that some good products would be available under the original proposal, TRS finds that employees desire a wider choice of services and products than would be available under the proposed limitations. Thus, changes to the proposed rules are necessary.

Some comments expressed support for the proposed rules because they would reduce the number of companies and products marketing to educational institution employees. The comments characterized the current marketing of 403(b) products in school districts as chaotic, with administrative burdens falling on districts, which turn to third party administrators (TPA) to ease the paperwork burdens. The comments noted that a TPA might use its role to provide its affiliated marketing organization with enhanced sales opportunities in the districts. The comments indicated a reduction in the number of companies would be beneficial, reducing burdens on districts and reducing the role of the TPA. The comments supported the proposed rules on the grounds that they would reduce the number of companies marketing higher fee products through commissioned sales representatives and would increase the opportunities for companies offering lower fee investments but who have little or no on-site presence in the school districts. The comments disagreed that the quality and availability of customer education would decrease if on-site presence of other companies were reduced because investment information can be made available by telephone or the Internet.

TRS agrees that a large number of certified companies could create a challenging administrative environment for employers. However, SB 273 does not contain provisions that indicate intent to dramatically restrict the number of companies that may market to educational institution employees. In fact, it contains several provisions to ensure that all certified companies have the opportunity to receive contributions through salary reduction agreements. With respect to the certification criteria in the law, though they are designed to weed out weak companies, they are not designed to limit the number of certified companies to only a handful. Thus, this chapter similarly is designed to establish basic standards, including maximum fees, but not to dramatically reduce the number of companies through stringent certification standards. Additionally, the TRS rules are not intended to give one kind of company or product a competitive advantage over another. Instead, they are designed to permit employees to choose the types of products and services they find appropriate. Though TRS agrees that quality investor education may be provided by companies though toll free numbers or Internet sites, TRS also finds that some employees prefer to speak to an advisor or sales representative in person. Therefore, TRS finds that the proposed fees should be changed to avoid a large reduction in the number of competing companies and to permit choice by employees.

In response to the comments, TRS has modified the surrender charges and surrender period to permit a charge of no greater than ten percent with a surrender period no greater than 12 years. These provisions will allow a variety of products and will allow a great degree of flexibility to offer a product suitable to the employee. They also address the potential impact on returns by permitting companies a twelve-year period for investment, reducing the likelihood of investment in shorter-term, lower-yielding bonds. They offer an adequate level of protection to the customer against excessive fees or lengthy surrender periods that penalize customers too severely. Coupled with other allowable charges, they provide a sufficient source of revenue for company costs.

Comments objected to the provisions prohibiting surrender charges on variable annuity accounts. For example, they noted that providing an "annuity wrapper" adds value to the product, and companies should be permitted to recover associated costs. Other comments concerning variable annuity accounts noted that such accounts should not be marketed based on tax-deferral advantages when sold as a 403(b) product, since tax-deferral advantages would be available for a plain mutual fund when sold as a 403(b) product. Some comments supported the proposed fees because they would ensure parity between mutual fund and variable annuity fees.

TRS agrees that variable annuity accounts may provide some features that result in costs to companies. TRS finds that it is appropriate to establish maximum surrender charges and other fees that will provide all companies flexibility to design products and establish charges that reflect their costs for service, features, guarantees, and other considerations. As for the comments regarding the marketing of variable annuities, TRS agrees that the tax-deferral feature of annuities compared to mutual fund investments is not relevant when both investments may be made on a tax-deferred basis through a 403(b) plan. However, if variable annuities are being marketed improperly, jurisdiction to investigate and sanction agents lies with TDI, not TRS, and this chapter cannot address all issues such as improper marketing of variable annuities. Therefore, TRS does not find these comments to be relevant to the establishment of appropriate fees for variable annuities.

Some comments proposed a "sliding scale" surrender charge of as much as 18 percent for as long as 14 years for a fixed annuity contract in which the company offers certain guarantees. For fewer guarantees, the surrender charges would be reduced. This approach was recommended in order for some agents to continue to earn the same level of commissions and to create a product that meets the employee's needs.

TRS declines to adopt the sliding scale proposal. The charges are higher than necessary to ensure employee choice of good products and desirable service levels. The proposal appears to be driven primarily by concern about size of commissions. While TRS acknowledges this is a valid concern for insurance agents, it must be balanced against other concerns. TRS received no convincing evidence to show that an 18 percent charge is necessary to achieve other objectives, such as compensating a company for policy set-up, deterrence of early withdrawal, personal service, or allowing appropriate underlying investments by companies. Additionally, the sliding scale proposal would require TRS to determine and define the appropriate guarantees and to determine a value that presumably correlates to the particular guarantee that a purchaser would receive in exchange for a particular fee level. The proposal would require TRS to create very detailed, specific product-design requirements, a task that is beyond the scope of the maximum fee provisions envisioned by SB 273 and by the rules as originally proposed.

Other comments proposed that TRS require that surrender charges be waived in certain circumstances, such as death, disability, terminal illness, or upon separation from employment. One comment proposed that in lieu of a surrender fee on fixed accounts, a company may offer a scheduled series of payments. TRS disagrees with the proposals because they relate to product design more than to establishment of appropriate maximum charges, certification requirements, and disclosure. Companies may offer such features under the rules as adopted, but TRS declines to require such features by rule.

53.3(h)

Some comments proposed that the subsection be clarified or deleted because it was not clear whether the subsection addressed guaranteed returns or some other provision of annuity contracts. TRS agrees that the subsection is unclear and has determined that it is appropriate to delete it because disclosure requirements for annuity contracts are specifically addressed in §53.9.

53.3(i)

TRS has re-worded this subsection for clarity with no change to meaning.

§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products that are Annuity Contracts.

53.4(b)

TRS received comments proposing that the certification standard in §53.4(b)(3)(B) be clarified to describe more precisely the type of TDI administrative or regulatory action that would disqualify a company from certification. TRS agrees that clarification would be helpful and has based revisions on proposals in the comments. However, TRS finds that it is not appropriate to specify that an order regarding hazardous conditions must be issued after notice and hearing in order to result in ineligibility to certify. This could exempt orders issued upon consent or waiver of hearing, even though the company is in hazardous condition. The procedure through which the order is issued should not be relevant when a company is in hazardous condition.

In §53.4(b)(3)(D) and (E), TRS has modified language based on TDI suggestions to use language and terminology commonly used in the insurance industry without altering the substance of SB 273. TRS also received comments proposing that TRS require companies to submit the underlying capital ratio calculations as part of their certification. TRS disagrees because capital requirements are established by TDI regulation, and companies are required to file annual reports showing the information necessary to make the calculations. To the extent there is any question about the accuracy of a company's certification that it meets the capital requirements, the information would be available from TDI to verify the certification. With respect to one proposal that the calculations be attested to by a company officer or actuary responsible for preparing them, TRS disagrees with including such a requirement in the rules. The proposal singles out one certification requirement for special verification, and TRS finds no need to do so by rule at this time.

In §53.4(b)(3)(F), comments proposed to permit affiliates to provide the specialized expertise for servicing qualified investment products. TRS agrees with the proposal because the addition allows some flexibility for a company to use a service affiliate. Another comment proposed modification of the "specialized department" requirement to more specifically describe what would be required for a company offering annuities and also noted that because fixed annuities are technically not "investments" under federal securities law, the application of the requirement was unclear. TRS declines to adopt the proposed language because while TRS agrees that servicing of fixed annuity products should be tailored to those products, a company nevertheless should be prepared to assist customers with general 403(b) questions, such as tax or rollover questions. TRS also finds it is unnecessary to adopt additional clarification regarding applicability of this subsection to fixed annuities because as discussed elsewhere,

for purposes of this chapter, a fixed annuity is a "qualified investment product." The requirement for a specialized department is a statutory requirement for all companies offering qualified investment products that are annuities, including fixed annuities.

One comment proposed that TRS require that companies not impose restrictions on representatives seeking to offer alternative investment products. TRS disagrees because regulation of the relationship between companies and their representatives is not within the scope of the chapter.

§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products Other Than Annuity Contracts.

Under this section, comments proposed to add a new provision specifically stating that a broker-dealer may obtain a payroll reduction slot with a school district if it represents a company certified to offer qualified investment products. Under the proposal, the broker-dealer would not be certified because, according to the comments, TRS is preempted under federal law from creating certification requirements for such entities. TRS disagrees with the proposal. First, TRS finds it unnecessary to address the preemption argument because Chapter 53 does not require that agents or broker-dealers be certified, unless they meet the definition of "company." The addition of the definition of "company" clarifies that the entity with the underlying liability on the qualified investment product is the entity that must certify in order to offer the product. Typically, a broker-dealer would not meet the definition of "company."

Second, TRS finds the proposal that Chapter 53 should authorize an uncertified entity, such as a broker-dealer, to receive salary reduction payments from a school district, beyond the scope of the rules. Under SB 273, TRS's main responsibility is to receive certifications by qualified companies and to list certified companies on the TRS Web site. Chapter 53 primarily establishes certification requirements and procedures for entities that have underlying liability for the qualified investment products. For these reasons, addressing the activities of uncertified entities is beyond the scope of the chapter.

53.5(b)(4)

One comment proposed simplification of the language in the subsection. TRS agrees that it is sufficient to require that the company must not have had a license or registration suspension or revocation with the five years preceding the date of certification, without need to describe any basis for the suspension or revocation. Such a description could be interpreted as more limiting than intended.

53.5(b)(5)

Some comments requested that the requirement to have in excess of $2 billion in assets under management be changed or clarified. Comments supporting lowering the amount to $1 billion maintained that doing so would avoid exclusion of some companies. Comments also requested clarification of whether the requirement applied company-wide or would apply fund by fund. Comments also proposed deletion of the requirement that the funds under management be "for 403(b)" plans. Some comments requested clarification of how, if at all, the requirement would apply to a broker-dealer or if a company offers a managed account program with various mutual funds shares in an employee's account.

In response to the comments, TRS has slightly re-worded the requirement to require that a company manage assets of at least $2 billion. The requirement that the assets be in mutual funds or other investment products "for 403(b)" has been deleted. Under subsection 53.5(b)(1), a company is required to have at least five years' experience in qualified investment products; this experience requirement need not be repeated through the financial strength requirement.

TRS declines to lower the required amount from $2 billion to $1 billion. TRS received no information on the number of additional companies that would be eligible to certify if the financial strength requirement were reduced. Because TRS received few comments requesting lowering of the amount, TRS finds that the $2 billion requirement will not be unduly limiting. TRS finds that requiring at least $2 billion in assets under management provides greater assurance of financial strength, a consideration deemed important under SB 273.

TRS disagrees that there is a need to clarify the requirement to explain whether the requirement is fund by fund or may be met on a company-wide basis. The definition of "company" provides sufficient clarification that the entity, such as the insurer or mutual fund company, that offers the underlying investments is the entity that must manage at least $2 billion in assets. If one company manages different mutual funds, there is no requirement for each fund to have at least $2 billion in assets. However, if different funds are managed by different legal entities, the financial strength requirement would apply to each fund and each entity would be required to certify.

As for a managed account situation, in which an investment advisor directs employee contributions to a number of mutual funds, each mutual fund company within a customer's managed portfolio must meet the financial strength requirement. Additionally, the financial strength requirement applies only to the entities that certify to TRS. Therefore, unless a broker-dealer or investment advisor is otherwise eligible to certify to TRS, the financial strength requirement of this subsection would not be applicable. There would be no need to "count" the mutual fund assets towards the investment advisor in an effort to have the advisor be eligible to certify. Comments indicated that in broker-dealer or investment advisor arrangements, in which a mutual fund company has authorized the broker-dealer or advisor to maintain the employee's account, it is the mutual fund company that nevertheless underwrites the account and has primary liability on the account. Under these circumstances, the mutual fund company is the entity that would meet the definition of "company" and would be eligible to certify to TRS. The broker-dealer or advisor would not be eligible to certify, regardless of whether it met the $2 billion asset requirement.

§53.5(b)(6)

TRS received comments on proposed §53.10, Annual Demonstration of Licensure and Training. In response, TRS deleted §53.10, under that section, and modified §53.6(c) to require that a certifying company affirm, as part of its certification, that each of its representatives is properly licensed and qualified. Because this requirement is applicable to all companies certifying to TRS, is it unnecessary to have a similar requirement in subsection 53.5(b)(6) specifically for companies offering qualified investment products other than annuity contracts.

§53.5(b)(7), (c), (d), and (e)

TRS received several comments regarding maximum fees that may be charged by a certified company offering qualified investment products other than annuities. In order to simplify the organization of the rules and avoid repetition, TRS has deleted

these provisions. Applicable fee provisions are adopted as part of §53.3, Maximum Fees, Costs, and Penalties.

Many of the comments about the fee caps applicable to annuity contracts also were made with respect to allowable charges for qualified investment products other than annuities. The TRS analysis of the comments under §53.3 is applicable to similar comments made on §53.5.

TRS also received comments that subsection 53.5(b)(7) should limit only "administrative costs," with this term proposed to be defined in a restrictive manner as described under §53.1. For example, one category of costs that would be excluded from the definition of "administrative costs" would be fees paid for investment advice. The proposal was not clear because, even though it recommended that such fees be excluded from the description of administrative costs and thus be excluded from any limitation under Chapter 53, the proposal also recommended specific limitations on charges that a broker-dealer or investment advisor would be permitted to charge on managed investment accounts, in addition to maximum fees, costs, and penalties assessed by a company.

As noted under §53.1, TRS disagrees with the restrictive definition proposed. Additionally, TRS has modified the wording of this subsection to make it more specific and consistent with subsection 53.3(a). With the clarifications, TRS finds it unnecessary to define the term "administrative costs." Further, TRS finds that any charges automatically deducted from an employee's payroll reduction contributions (or an investment or account established with such contributions) are administrative costs and are within TRS's authority to limit as a requirement for certification under Article 6228a-5, §8(a)(2).

Some comments proposed that additional fees be permitted for management of a managed investment account, whether the services are provided by a certified company or by a broker-dealer or investment advisor. Some comments also proposed that the term "managed investment account" be described in this rule section. For example, proposals suggested that, in addition to other allowable fees, the rules should permit annual managed investment account (MIA) fees of 1.75 to 2.00 percent on accounts of up to $50,000, 1.75 percent on accounts between $50,001 and $100, 000, 1.5 percent for accounts of between $101,000 and $500,000, and 1.0 percent for accounts over $500,000.

TRS disagrees with the comments. First, TRS finds it unnecessary to define or describe account arrangements that are not provided for in SB 273. Additionally, the re-organized fee provisions eliminate references to specific kinds of asset classes; the changes eliminate any need to refine or expand the asset classes and set fees by class. This gives more flexibility for blended or managed accounts.

Second, TRS finds it unnecessary to establish separate MIA fees. Establishing allowable payments to be received by representatives or agents of certified companies is beyond the scope of this chapter. The companies and their representatives are free to share the revenues received from allowable charges to employees in any proportion they agree upon, so long as the total charges deducted from an employee's account or payroll reduction contributions do not exceed the charges allowable under these rules.

Further, by permitting additional types of fees, such as fixed annual fees and sales loads, there are additional opportunities for companies and their representatives to receive compensation for individual services. Finally, by increasing the annual percentage that may be charged to an employee's account, TRS finds that the 2.75 percent maximum annual account charge is sufficient to permit compensation to individuals who provide account management services to employees. Companies may divide the revenues from the 2.75 percent charge with investment advisors or broker-dealers as they see fit, but neither the certified companies nor the MIA managers may deduct higher or additional charges from employee accounts or payroll reduction contributions.

§53.6. Procedure for Certification.

53.6(a) and (b)

TRS made changes to clarify that when a company certifies, it must specify whether it is offering qualified investment products that are annuity contracts, products other than annuity contracts, or both. This is necessary so that TRS may easily determine what qualifications apply to the company. Other wording was changed to improve readability and for consistency in use of terms.

TRS received comments proposing that companies be required to file policy forms or prospectuses for the products they claim are qualified, so that there will be no confusion over which products can be sold. TRS does not agree. SB 273 requires certification of companies, not of products. Requiring companies to file the material would create an administrative burden on TRS to retain and make it available, as well as to identify the specific products by name on the Web site and to keep the list updated. TRS finds that the proposal would require additional administrative steps for itself and for companies. Because annuity contract forms are filed with TDI for approval and because federal securities law requires mutual funds to provide prospectuses to customers, TRS believes employees would not benefit from the proposed procedures.

53.6(c)

TRS received comments that the requirements for training and licensing of representatives were not clear. Some comments also objected to the subsection because a referenced form was not published for comment. To clarify the requirements, TRS has modified this subsection to refer to the statutory requirements for company representatives. TRS finds that because Article 6228a-5, §12, requires an annual demonstration of qualifications, it is appropriate to require, at time of certification, that certifying companies affirm that their representatives are properly qualified. It also is appropriate to require them to affirm that they will comply with the statutory requirement to make the same demonstration annually. The objection to the absence of a published form is addressed in general comments.

53.6(d)

TRS re-worded the subsection to use terminology consistent with that used throughout the chapter. Comments on the certification deadline proposed a "provisional" certification process under which a company would be permitted to market products in school districts prior to certification if contract form approval for the annuity contract products was pending at TDI. This scenario assumed that a company would need new contract form approval from TDI in order to have at least one qualified investment product with fees within the limits of this chapter. Under the proposal, the company would certify to TRS after receiving product approval from TDI for at least one product that meets the fee limits.

TRS disagrees with the proposal because provisional certification is unnecessary and would be both cumbersome and confusing. First, the proposal appears to have been prompted by concern that under the proposed fee structure, many companies would not have any products that met the fee limits and would not be able to certify until new products were approved by TDI. However, because of changes to the proposed fees, there should be fewer companies that do not have at least one product with fees within the limits. Even if some companies still will not be able to certify until they obtain new product approval from TDI, TRS rejects provisional certification as inconsistent with SB 273. It would permit a company that does not meet certification requirements to continue to market products to school employees. Furthermore, after consultation with TDI, TRS believes that the contract approval process can be handled expeditiously. Provisional certification would add administrative burden to TRS and create uncertainty and confusion for school districts and employees.

Second, as an alternative to provisional certification, TRS has added new language in subsection (e) to permit certifications for the 2002-2003 school year to be filed as late as December 31, 2002, instead of by June 1, 2002. Though after June 1, 2002, a company may not offer products that are likely to be the subject of salary reduction agreements unless the company is certified, the extension of the filing date gives companies more time to obtain TDI approval and then market newly approved products in the remaining part of the 2002-2003 school year.

53.6(f) - (h)

TRS has modified language in these subsections to use terminology more consistently throughout the chapter and in response to various comments. The subsections have been re-lettered to reflect new language added as subsection (e). In subsection (g) TRS changed the time period specified for notification of changes in company information to 30 calendar days, which is consistent with §53.8. This change eliminates potential confusion. The subsection also clarifies the kind of changes that TRS must be notified of, in response to comments proposing clarifications. Comments proposed that subsection (h) (formerly subsection (g)) be modified to clarify when notification of a violation may result in rejection of certification. TRS agrees and has clarified the subsection substantially as requested. Comments also proposed that TRS permit a period of time following rejection of certification for a company to re-submit its certification without being required to pay another certification fee. TRS agrees with the comment and finds that if a re-certification is submitted within 30 business days following a rejection of certification, TRS still will have familiarity with the circumstances and can review the re-certification more efficiently compared to a completely new certification. Therefore, TRS agrees that a company should not be required to pay a new fee under such circumstances.

§53.7. Certification Fee

TRS received comments about the proposed $5,000 fee for five-year certification. Some commented that it was too high and might affect investment returns. One comment requested that the fee not apply to separate legal entities. TRS does not agree with the comments and declines to change the fee. It will have a negligible impact on investment returns. It amounts to $1,000 per year, statewide, per certifying company. Further, because TRS received no legislative appropriations specifically to administer the certification program, this fee is the source of revenues for the administrative duties required of TRS under SB 273.

TRS finds it is appropriate to assess fees on a "per entity" basis when separate but related legal entities certify to TRS. If companies find it necessary or desirable to have separate legal entities for different aspects of their business, TRS finds that separate certifications are required for each of the different legal entities. When separate certifications are required, TRS finds it appropriate to assess separate certification fees because TRS will be required to review multiple certifications. TRS finds no basis to permit different legal entities to submit only one certification and one certification fee.

As discussed under Section 53.6, TRS agrees that if certification is rejected, a company should be permitted to re-submit its certification within thirty business days under the same certification fee. Accordingly, TRS has modified subsection (d) to permit TRS to hold a certification fee for that period of time to determine whether a company will pursue certification. This will reduce administrative handling.

§53.8. List of Certified Companies.

TRS has made minor changes in wording to clarify meaning, to use terms more consistently throughout the chapter, and to include a statutory reference.

§53.9. Notice to Potential Purchaser.

TRS received comments suggesting the addition of a new provision to limit the statutory remedy of a customer to void a contract when notice has not been given. The comments expressed concern about the open-ended time frame in Article 6228a-5, §11(f), for a customer to request a remedy. TRS disagrees with the comments because TRS questions the authority to limit an employee's statutory remedy by adoption of a rule. Companies may minimize any perceived problem by providing the required notice and other information and obtaining a signed statement to that effect from the employee.

53.9(a)

Pursuant to comments, TRS has added language to clarify that the notice requirement applies when there is an offer to sell an annuity contract. Also, the subsection as proposed was confusing with regard to variable annuity contracts and equity-based index annuity contracts and has been modified for clarity. TRS received comments expressing concern about the absence of a definition of the word "person." TRS finds it unnecessary to define this term because it is self-explanatory. By using the word "person," the notice requirement of Article 6228a-5 appears intended to apply to both companies and their representatives. TRS declines to define the word in a way that possibly would be more restrictive than, and would interfere with the intent of, the statute.

Another comment proposed that the specific notice requirements be set forth in the text of the TRS rule. TRS disagrees because the statute provides very specific notice requirements and because TRS will promulgate a form notice as required by statute. Given the specific nature of the statute, it is unnecessary to repeat the requirements in a rule.

53.9(b)

TRS received comments proposing clarification of when notice is required to be provided when a sale of an annuity contract is offered. Comments proposed different times, including when an application is signed and when consideration is received. TRS agrees that clarification would be helpful. TRS agrees that notice should be provided when an application is signed because

this normally is earlier than when consideration is received, especially when payroll reduction agreements will be used. TRS finds that the earlier the disclosure notice is provided, the more informed an employee will be before entering into a transaction.

TRS also received comments that TRS should address technical violations of the notice requirement differently than substantive violations of certification requirements. TRS finds it unnecessary to address this issue as requested. The statute sets forth notice requirements, and persons selling qualified investment product are required to adhere to all requirements. Further, because certification is a new process, TRS does not have sufficient information to draw the kind of distinctions requested.

One comment suggested addition of language stating that the method for crediting, and the amount, of interest or return must be clearly disclosed on all statements sent to an employee and that the failure to clearly disclose the method for crediting, and amount of, interest or return will be considered a violation. TRS does not agree with the comment. The statute provides authority over the form of the initial notice to the employee and specifies what the notice must include. TRS declines to adopt rules that would apply to annual or quarterly statements made to an employee since this is not provided for in the statute.

53.9(d)

One comment proposed adding a provision that either a potential purchaser or a purchaser of an annuity may request in writing from TRS a copy of a certified company's notice relating to a specific contract. TRS disagrees and finds that it is unnecessary to include this level of detail in the rules. The statute and this chapter provide a sufficient procedure for TRS to obtain a copy of the notice on behalf of a purchaser, upon request by a purchaser for TRS assistance with such a matter. However, it is primarily the company or agent's responsibility to provide notice to the customer, without need for a special request through TRS. If the responsibility is met, TRS will not need to act as an intermediary for the employee and the company or agent. Adopting a provision to specify that an employee may request a copy of the notice from TRS would have potential for creating an impression that employees routinely should contact TRS instead of the company. A similar proposal suggested that TRS create a Web-based database in which to receive and store such disclosure forms. TRS disagrees, again because this creates an impression that an employee should routinely turn to TRS for the notice, when it is a company's specific responsibility to provide the notice. TRS agrees that a Web-based notice may be convenient for employees, and companies are free to place such material on their own Web sites in order to permit an employee to peruse the information.

§53.10. Annual Demonstration of Licensure and Training.

Some comments objected to the inclusion of proposed §53.10 on grounds that it is beyond the scope of TRS's rulemaking authority and confusing about what requirements are to be imposed. TRS agrees that SB 273 does not expressly address TRS's rulemaking authority with respect to administration of Article 6228a-5, §12. However, TRS finds that it has authority to establish requirements relating to qualifications of representatives as part of company certification. Therefore, this section has been deleted, and the "annual demonstration" requirement has been addressed in §53.6 as part of the certification process.

§53.11 Coordination with Regulatory Agencies

TRS made minor wording changes to conform language to other provisions of Chapter 53. Also, TRS received comments requesting clarification regarding the use of "may" instead of "shall" with respect to referring complaints to regulatory agencies. TRS has clarified that it shall refer complaints, depending on the jurisdiction of either TDI or the State Securities Board.

§53.12. Company Notification of Non-compliance.

TRS made minor wording changes to conform language to other provisions of Chapter 53.

§53.13. Revocation of Certification.

One comment proposed language to clarify the provision. TRS agrees clarification would be helpful and has modified the language to refer to the statutory provisions addressing notification of a violation.

§53.14. Re-certification.

TRS has modified the language to clarify the meaning using terminology consistent with other provisions of Chapter 53. However, one comment suggested language that could be interpreted as permitting a company to show that all of the requirements for certification have been met, with the exception of the continuous, five-year historical requirements described in §53.4. TRS disagrees with the proposed language because the five-year requirements are statutory.

§53.15. Additional Requirements.

One comment proposed detailed requirements regarding the execution of transfer of assets. TRS disagrees with the proposal because SB 273 does not require TRS to adopt rules regulating the execution of transfers and doing so would be beyond the scope of the rules as originally published. Some comments proposed clarifying language for this section, but on review of the section, TRS has determined the section is unnecessary, and it has been deleted. The rule repeats a statutory requirement that, though important, is not a requirement for certification. As for the proposed clarification offered by some comments, TRS declines to adopt the proposals because they involve too great a level of regulation of a company operations when viewed in the context of TRS's primary responsibility, establishing a process for certification.

The new sections are adopted under Texas Civil Statutes, art. 6228a-5, §6(c), which authorizes the Board of Trustees of the Teacher Retirement System of Texas to adopt rules to administer Section 5, 6, 7, 8, and 11 of art. 6228a-5.

§53.1. Definitions.

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

(1) Annuity or annuity contract--A qualified investment product that meets the requirements for a fixed or variable annuity contract under applicable insurance laws and rules.

(2) Board of trustees--The board of trustees of the Teacher Retirement System of Texas (TRS).

(3) Certified company--A company that meets all certification requirements, that has certified to TRS and been placed on the TRS list of certified companies, and whose certification has not expired or been rejected or revoked.

(4) Certify--To submit all required information to TRS and meet all required qualifications for certification, as indicated by TRS's inclusion of a company on the TRS list of certified companies.

(5) Company--An entity that offers and issues a qualified investment product and that has primary liability to the purchaser for performance of the obligations described in the product, contract, annuity contract or annuity certificate, or policy. Generally, "company" does not include reinsurance companies, third party administrators, entities performing duties under administrative-services-only contracts, and representatives such as licensed or registered agents, brokers, or dealers, unless such entities have primary liability for performance of the obligations in the product or contract.

(6) Contract--An agreement through which an employee purchases or enrolls in a qualified investment product, such as an insurance policy, an annuity contract, or an annuity certificate in a group annuity contract, or establishes a qualified investment product such as a mutual fund account.

(7) Educational institution--A school district or an open-enrollment charter school.

(8) Eligible qualified investment--A qualified investment product offered by a company that:

(A) is certified to the board of trustees to offer qualified investment products that are annuity contracts; or

(B) is certified to the board of trustees to offer qualified investment products other than annuity contracts.

(9) Employee--An employee of an educational institution.

(10) Qualified investment product--An annuity or investment that:

(A) meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(11) Representative--A person who sells or offers for sale an eligible qualified investment product on behalf of a certified company and who is licensed or registered if so required by law.

(12) Retirement system or TRS--The Teacher Retirement System of Texas .

(13) Salary reduction agreement--An agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

(14) School year--a twelve-month period established by an educational institution as its school year and, for purposes of this chapter, beginning after June 1 of a calendar year.

(15) Specialized department--One or more employees of a certified company or a company affiliated with the certified company dedicated to service of qualified investment products. If the certified company is authorized by the Texas Department of Insurance to issue annuity contracts in the State of Texas, the affiliated company must be part of an Insurance Holding Company system as defined in Article 21.49-1, Insurance Code.

§53.2. Applicability.

(a) This chapter applies to companies that offer qualified investment products to employees of educational institutions in the State of Texas if such products are, or are likely to be, the subject of salary reduction agreements.

(b) A company that, on or after June 1, 2002, offers, issues, or enters into a contract for a qualified investment product that is, or is likely to be, the subject of a salary reduction agreement shall certify to TRS prior to offering, issuing, or entering into a contract for the product. For purposes of this chapter, offering, issuing, or entering into a contract for a qualified investment product includes offering enrollment in, or enrolling an employee in, a group annuity contract through issuance of an annuity certificate.

(c) A company that entered into a contract with an employee before June 1, 2002, is not subject to the certification requirements established by this chapter with respect to that contract, but the company is subject to the certification requirements established by this chapter with respect to any contracts or qualified investment products offered to, or entered into with, an employee on or after June 1, 2002.

(d) If a company has entered into a contract with an employee before June 1, 2002, the company or employee may demonstrate in a manner acceptable to an educational institution that the provisions of this chapter do not apply to the contract in order for the company to receive contributions to, or payments for purchase of, the qualified investment product described in the contract through a salary reduction agreement between the educational institution and the employee.

§53.3. Maximum Fees, Costs, and Penalties.

(a) A certified company offering qualified investment products may not assess fees, costs, or penalties in excess of the amounts established in this section.

(b) This section does not establish or govern the amount of commission a certified company may pay a broker, agent, or other representative.

(c) A certified company may charge a front-end sales load or back-end sales load that in the aggregate does not exceed six percent (6%) of the amount identified in the contract as subject to sales load charges, such as premiums paid or the price of the fund shares.

(d) A certified company may charge an annual fixed dollar fee of no more than $50.00 per year per qualified investment product, contract, policy, or account. A fixed dollar fee is not dependent on account values, loan amounts, or any other amount for its determination.

(e) For a qualified investment product other than an annuity contract and for the portion of an annuity contract that consists of a variable account, a certified company may assess a charge of no more than 2.75 percent annually of the total value of assets in the employee's variable annuity contract account or other investment product account.

(f) A certified company may charge a surrender or withdrawal charge on an annuity contract account that may not exceed ten percent (10%) of the accumulation (account) value, the individual deposits, or the premiums paid, whichever is specified in the contract. Surrender charges must terminate within ten (10) years of the inception of the employee's contract unless a disclosure is made informing the employee of a longer period of not in excess of twelve (12) years. No surrender or withdrawal charge may be longer than twelve (12) years from the inception of the employee's contract. Surrender or withdrawal charges shall decline annually. Surrender or withdrawal charges imposed for longer than ten (10) years are limited to no more than one percent (1%) in year eleven and one percent (1%) in year twelve. Surrender or withdrawal charges may be based on the accumulation value of an annuity or a component part thereof, as specified and defined in the contract.

(g) A certified company may charge a loan initiation fee of no more than $50.00. This subsection does not prohibit a company from charging interest on a loan in addition to a loan initiation fee. If the investment product is an annuity contract, loan terms must comply with

applicable requirements of insurance laws, including Article 3.44c, Insurance Code.

(h) This section does not authorize a certified company offering qualified investment products that are annuity contracts to charge fees, costs, or penalties in excess of any charges established or approved by the Texas Department of Insurance for the company or for the annuity contract.

§53.4. Qualifications for Certification by Companies Offering Qualified Investment Products that are Annuity Contracts.

(a) A company may certify to TRS that it offers qualified investment products that are annuity contracts if the company meets the requirements of this section.

(b) A company may certify to TRS under this section if the company:

(1) is authorized to issue annuity contracts in the State of Texas at the time the certification is filed;

(2) does not assess fees, costs, or penalties in an annuity contract that exceed the maximum amounts established by this chapter; and,

(3) complies with the following standards:

(A) the company's actuarial opinions required under Articles 1.11 and 3.28, Insurance Code, have not been adverse or qualified in the five years preceding the date the certification is filed;

(B) the company is subject to the annual audit requirements of Article 1.15A, Insurance Code, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadlines for the audit;

(C) the company has not been the subject of any of the following administrative or regulatory actions by the Texas Department of Insurance in the five years preceding the date the certification is filed:

(i) an order to rectify one or more conditions that render the continued operation of the company hazardous to policyholders, creditors, or the general public, pursuant to Article 1.32, Insurance Code;

(ii) a supervision, conservation, or liquidation of the company pursuant to Article 21.28-A, Insurance Code; or

(iii) a cease and desist order issued to the company pursuant to §83.051, Insurance Code, or its predecessor statute, Article 110A, Insurance Code.

(D) the company has maintained total adjusted capital during the five years preceding the date the certification is filed of an average of at least 400 percent of the authorized control level risk-based capital, as calculated in accordance with the risk-based capital requirements established in rules adopted by the Texas Department of Insurance, with the five-year average to be calculated using the company's financial results as of December 31 of the five preceding years;

(E) the company's total adjusted capital has not fallen below 300 percent of the authorized control level risk-based capital, as calculated in accordance with the risk-based capital requirements established in rules adopted by the Texas Department of Insurance, at any time in the five years preceding the date the certification is filed; and

(F) the company has at least five years' experience in qualified investment products and has a specialized department dedicated to the service of qualified investment products. If a company is part of an Insurance Holding Company System as defined in Article 21.49-1, §2(i), Insurance Code, and an affiliated company has met the five years experience requirement of this section, the company is deemed to have the same experience of its affiliate for purposes of this section.

§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts.

(a) A company that offers qualified investment products other than annuity contracts may certify to TRS if it meets the requirements of this section.

(b) A company is eligible to certify if:

(1) The company has at least five years' experience in qualified investment products and has a specialized department dedicated to service of qualified investment products.

(2) The company is qualified to do business in the State of Texas.

(3) The company is registered with the Securities and Exchange Commission, the State Securities Board, or other regulatory entity, if required by law.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages assets of at least $2 billion.

(6) The company does not assess fees, costs, or penalties that exceed the maximum amounts established by this chapter.

§53.6. Procedure for Certification.

(a) A company that meets the qualifications for certification may certify to TRS that it offers one or more qualified investment products, which shall be identified in the certification as annuity contracts, qualified investment products other than annuity contracts, or both.

(b) A company certifies to TRS by providing all information required in this chapter on a form promulgated by TRS for this purpose and by paying the required certification fee.

(c) As part of its certification to TRS, a company shall affirm that each of its representatives is properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments and that the company will demonstrate this annually to TRS, as required by Texas Civil Statutes, Article 6228a-5, §12.

(d) A certifying company shall file its certification with TRS no later than June 1 in order to offer eligible qualified investment products during the school year beginning after June 1 in the same calendar year.

(e) Notwithstanding subsection (d) of this section, a company may file its certification after June 1, 2002, but no later than December 31, 2002, in order to be eligible to offer qualified investment products during the remainder of the 2002-2003 school year following certification by the company.

(1) This subsection does not authorize a company to offer qualified investment products after June 1, 2002, without having certified to TRS.

(2) A company that files its certification under this subsection nevertheless is subject to the June 1 filing requirement of subsection (d) of this section in the calendar year 2007 if it wishes to offer qualified investment products during the entire 2007-2008 school year.

(f) A certifying company shall pay the certification fee established by this chapter to TRS at the time it certifies to TRS.

(g) A certified company has an on-going duty to correct any erroneous or misleading information provided to TRS in the certification process. A company shall notify TRS within 30 calendar days of a change in the information provided in its certification if such a change affects the accuracy of the company's certification or its eligibility for certification.

(h) TRS may reject a company's certification if the company does not provide all required information, if the information provided indicates the company does not meet the requirements for certification, or if TRS receives notification of a violation regarding the company or the company's product from either the Texas Department of Insurance, the State Securities Board, or the company.

(i) Rejection of certification is final but a company may re-certify if it subsequently submits information or corrections that show it meets the requirements for certification. Additional or corrective information filed within 30 business days following a rejection of certification shall not require payment of an additional certification fee.

(j) Certification remains in effect for five school years unless revoked by TRS.

§53.7. Certification Fee.

(a) A company shall pay a certification fee of $5,000 to TRS at the time certification is filed.

(b) A company certifying that it offers both annuity contracts and investments other than annuity contracts shall pay one certification fee if the company files its certifications for both types of qualified investment products at the same time. If the certifications are filed separately, a company shall pay a separate certification fee for each separate certification.

(c) If a company proposes to certify more than one legal entity, the company shall submit separate certifications and fees for each legal entity.

(d) If TRS rejects certification by a company, TRS shall retain the amount of the certification fee sufficient to reimburse TRS for its administrative costs associated with review of the certification. TRS may hold the entire certification fee for at least thirty business days after rejection in order to determine whether the company will pursue certification.

(e) No portion of a certification fee is refundable if TRS revokes a certification.

§53.8. List of Certified Companies.

(a) Upon verification that all required information has been provided in a company's certification and that the certification fee has been paid, TRS shall include the certified company on the list maintained on the TRS Web site.

(b) A certified company shall notify TRS in writing of any changes to information appearing on the list no later than thirty calendar days after the changes become effective.

(c) TRS shall remove a company from the list upon revocation or expiration of the company's certification.

(d) TRS may indicate on the list whether a certified company has complied with the requirement of Texas Civil Statutes, Article 6228a-5, to demonstrate annually that its representatives are properly licensed and qualified to sell and service the company's eligible qualified investments.

§53.9. Notice to Potential Purchaser.

(a) A person who offers to sell an annuity contract that is or may be the subject of a salary reduction agreement shall provide notice to a potential purchaser and other information as required under Texas Civil Statutes, Article 6228a-5.

(b) The notice must be given to the potential purchaser at the time an application form is signed.

(c) The form of the notice for an annuity contract shall be as provided by TRS on its Internet Web site, www.trs.state.tx.us. A company shall use the form notice as the basis for its annuity contract notices to potential purchasers.

(d) A certified company shall provide TRS a copy of the company's notice relating to a specific contract within ten business days of a request by TRS.

§53.11. Coordination with Regulatory Agencies.

(a) TRS shall refer complaints about qualified investment products or the companies or persons offering them to the Texas Department of Insurance or the State Securities Board, depending on whether one or both agencies have jurisdiction over the complaint or over the person or company that is the subject of the complaint.

(b) TRS may receive notifications from the Texas Department of Insurance or the State Securities Board regarding a product or company that violates certification requirements or standards.

§53.12. Company Notification of Non-compliance.

(a) No later than thirty calendar days after the relevant triggering event, a certified company shall notify TRS in writing:

(1) if, at any time, the company is not in compliance with the requirements and standards for certification, including as a result of a merger or change in ownership; or,

(2) if an investment product that the company offers to educational institution employees is the subject of a salary reduction agreement and the investment product is not a qualified investment product.

(b) The company shall provide TRS information sufficient to explain the occurrence leading to the notification, including nature of non-compliance or reason for non-qualification of a product, date of the occurrence, and other information requested by TRS to determine whether a company should remain certified.

(c) TRS may reject or revoke the certification of a company based on notification of non-compliance with certification requirements or based on non-qualified investment products that are the subject of salary reduction agreements.

§53.13. Revocation of Certification.

(a) TRS may revoke a company's certification if the company no longer meets certification requirements or if TRS receives notification of a violation regarding the company or the company's product as provided in Texas Civil Statutes, Article 6228a-5, §6(f).

(b) Upon revocation of certification, TRS shall remove the name of the company from the list of certified companies maintained by TRS.

(c) Revocation of certification is final but a company may re-certify if it meets the requirements to do so.

§53.14. Re-certification.

(a) A company may re-certify to TRS following expiration, rejection, or revocation of its certification.

(b) In order to re-certify, a company shall provide all information required for certification and shall pay the certification fee in effect at the time re-certification is filed.

(c) To re-certify following rejection or revocation of certification, a company must specifically demonstrate that the grounds for rejection or revocation have been remedied.

(d) A company shall file its re-certification with TRS no later than June 1 in order to offer eligible qualified investments during the school year beginning after June 1 in the same calendar year.

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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Charles Dunlap
Executive Director
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Texas Department of Human Services (DHS) adopts amendments to §§30.14, 30.16, 30.20, 30.30, 30.54, and 30.82 in its Medicaid Hospice Program chapter without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1126).

Justification for the amendments to physician certification and continuous home care sections is to clarify the current requirement that providers who serve dually eligible individuals must have a Medicaid hospice contract. Dually eligible recipients must elect the Medicare and Medicaid hospice programs at the same time.

Justification for amending §30.14 is to reflect Medicare guidelines. Providers requested the language in subsection (b) to ensure that physicians review information or talk to the referring physician before signing the forms. Many recipients die before a physician makes a visit. Subsections (d) and (f) were also relocated.

Justification for language added to §30.16 and §30.20 is to define dual eligibility. DHS rules only addressed dual eligibility in §30.18, whereas the Center for Medicare & Medicaid Services (CMS) Medicaid Guidelines, §4303, Election, Revocation and Change of Hospice, addresses dual eligibility in three sections. DHS rules were amended to add a reference to dual eligibility to the two additional sections.

Justification for the addition of subsection (d) in §30.30 is to require providers to have a Medicaid contract to receive Medicaid payment, which is a federal requirement. The mailing address was corrected and an overnight mailing address was included at the providers' request in subsection (h).

Justification for amendments to §30.54(a)(4) is to ensure appropriate use of continuous home care at all times. DHS added the definitions in paragraph (a)(6) because there was confusion about what these terms meant. As stipulated in paragraph (a)(8), DHS will not accept faxed requests for extensions of continuous care, because of the large amount of information faxed to the department. The high probability that such information may not actually be faxed or received via fax, combined with the amount of time and resources required to account for such information, directed development of this policy. Subparagraph (a)(8)(A) clarifies the mailing address. Clause (a)(8)(B)(i) was added, because additional documentation is needed when reviewing continuous home care cases. This additional information will document the circumstances that led up to the crisis and show if those symptoms were observed the preceding week. Paragraph (a)(9) was added because current time frames are difficult for DHS staff to meet given current job duties. To avoid confusion, DHS will review one set of documentation per extension as outlined under (a)(10).

Justification for the change to §30.82(d) is to correct the address and include the overnight mailing address, which providers requested.

DHS received no comments regarding adoption of the amendments.

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §§30.14, 30.16, 30.20

The amendments are 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 amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

Filed with the Office of the Secretary of State on April 11, 2002.

TRD-200202231
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROVIDER REQUIREMENTS FOR ENTRANCE INTO THE TEXAS MEDICAID HOSPICE PROGRAM; DISCLOSURE REQUIREMENTS

40 TAC §30.30

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.

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

Filed with the Office of the Secretary of State on April 11, 2002.

TRD-200202232
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER E. COVERED SERVICES

40 TAC §30.54

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.

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

Filed with the Office of the Secretary of State on April 11, 2002.

TRD-200202233
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER H. ENFORCEMENT

40 TAC §30.82

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.

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

Filed with the Office of the Secretary of State on April 11, 2002.

TRD-200202234
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), regarding the definitions of an underinsured motor vehicle in Endorsements 578, Named Non-Owner Coverage and 579, Named Operator-Government Employees. Staff's petition (Ref. No. A-0402-13-I), was filed on April 12, 2002.

Staff proposes amendments to the Manual's Endorsements 578 (to be redesignated 578A) and 579 (to be redesignated 579A) in order to conform the definition of an underinsured motor vehicle to the definition in the Texas Personal Auto Policy. Each endorsement currently provides,

"An underinsured motor vehicle is one to which a liability bond or policy applies but its limit of liability:

a. is less than the liability for this coverage; or

b. has been reduced by payment of claims to an amount less than the limit of liability for this coverage."

Under staff's proposal, Endorsement 578, Section II.C.4., subsections a and b; and Endorsement 579, Section IV.C.4., subsections a and b would be amended to read as follows:

"a. is not enough to pay the full amount the covered person is legally entitled to recover as damages; or

b. has been reduced by the payment of claims to an amount which is not enough to pay the full amount the covered person is legally entitled to recover as damages."

The definition of an underinsured motor vehicle in the Texas Personal Auto Policy formerly was the same as the definitions currently contained in Endorsements 578 and 579. However, on September 13, 1989 the Supreme Court of Texas voided the policy's definition, holding it not to be in compliance with Insurance Code Article 5.06-1 (Stracener vs. United Services Automobile Association, et al., 777 S.W.2d 378 (Tex. 1989)).

The Department made multiple revisions to the Texas Personal Auto Policy through Board Order No. 59369, for policies that became effective on and after March 1, 1992, including a revised definition of an underinsured motor vehicle consistent with the Supreme Court's decision. The definitions in Endorsements 578 and 579 were not amended at that time. However, this inconsistency has been brought to Staff's attention and needs to be remedied.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0402-13-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on May 27, 2002 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200202364
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 17, 2002

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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 Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (the "TCFP") will review and consider for readoption, review, or repeal sections of Chapter 491, Voluntary Regulation of State Agencies and State Agency Employees, of Title 37, Part 13 of the Texas Administrative Code, in accordance with Government Code, §2001.39, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11.

Specifically, the following sections of Chapter 491 shall be reviewed: §491.1 Election of Components for Voluntary Regulation, §491.3 Documentation, §491.5 Notification; and §491.7 Certification.

As required by the above authorities, the TCFP will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments on the proposal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director.

Any questions pertaining to this notice of intention to review should be directed to the Texas Register Liaison, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

TRD-200202394
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

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The Texas Commission on Fire Protection (the "TCFP") will review and consider for readoption, review, or repeal sections of Chapter 493, Voluntary Regulation of Federal Agencies and Federal Agency Employees, of Title 37, Part 13 of the Texas Administrative Code, in accordance with Government Code, §2001.39, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11.

Specifically, the following sections of Chapter 493 shall be reviewed: §493.1 Election of Components for Voluntary Regulation, §493.3 Documentation, §493.5 Notification; and §493.7 Certification.

As required by the above authorities, the TCFP will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments on the proposal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director.

Any questions pertaining to this notice of intention to review should be directed to the Texas Register Liaison, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

TRD-200202395
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

♦ ♦ ♦

The Texas Commission on Fire Protection (the "TCFP") will review and consider for readoption, review, or repeal sections of Chapter 495, Regulation of Nongovernmental Departments, of Title 37, Part 13 of the Texas Administrative Code, in accordance with Government Code, §2001.39, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11.

The following sections of Chapter 495, Subchapter A, Voluntary Regulation of Nongovernmental Departments, shall be reviewed: §495.1 Application Procedures; §495.3 Notification; and §495.5 Nongovernmental Fire Protection Employees.

The following sections of Chapter 495, Subchapter B, Regulation of Nongovernmental Organizations and Nongovernmental Personnel, shall be reviewed: §495.201 Nongovernmental Organizations; §495.203 Nongovernmental Organization Employees; §495.205 Nongovernmental Personnel; and §495.207 Regulation and Certification.

As required by the above authorities, the TCFP will consider, among other things, whether the reasons for adoption of these rules continue to

exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments on the proposal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director.

Any questions pertaining to this notice of intention to review should be directed to the Texas Register Liaison, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to *info@tcfp.state.tx.us*.

TRD-200202396
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

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Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists proposes to review Chapter 470. Administrative Procedure §§470.1 - 470.24, in accordance with the Appropriations Act, Section 167. As part of this review process, the Board proposes New Rules 470.7 (Computation of Time), 470.11 (Service in Non-Rulemaking Proceedings), and 470.18 (The Record) in accordance with the Appropriations Act, Section 167. The proposed new rules may be found in the Proposed Rules section of the *Texas Register*. In addition, the Board proposes to amend the existing §470.8 (Informal Disposition of Complaints) and 470.21 (Disciplinary Guidelines) in accordance with the Appropriations Act, Section 167. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The Board is not proposing any changes to existing Rules §470.1 through §470.6, §470.10 through §470.19, and §470.24.

The Texas State Board of Examiners of Psychologists proposes to review Chapter 471. Renewals, §§471.1 - 471.6, in accordance with the Appropriations Act, Section 167. The Board is not proposing any changes to existing Rules §471.1 through §471.6.

Comments on the proposals may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Tower II, Suite 2-450, Austin, Texas 78701.

TRD-200202257
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: April 12, 2002

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Adopted Rule Reviews

Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (the "TCFP") adopts the review of Title 37, Texas Administrative Code, Part 13, Chapter 421, Standards for Certification, in accordance with Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11. The proposed rules review was published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10629). No comments were received regarding readoption of the chapter.

Specifically, the following sections of Chapter 421 were reviewed: §421.1 Procedures for Meetings, §421.3 Minimum Standards Set by the Commission, §421.5 Definitions, §421.7 Recognition of Previous Volunteer Training, §421.9 Designation of Fire Protection Duties, §421.11 Requirement to be Certified Within One Year, and §421.13 Individual Certificate Holders.

The TCFP determined that the original reasons for adoption of these rules continue to exist. As a result of the review process, the TCFP proposed changes to §421.5 Definitions, new §421.15 Requirement to be Certified Within One Year, and new §421.17 Requirements to Maintain Certification. The proposed changes and new sections were published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10803). New §421.15 was subsequently withdrawn by the TCFP in order to make substantive changes, and the proposal was republished in the March 29, 2002, issue of the *Texas Register*.

TRD-200202390
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

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The Texas Commission on Fire Protection (the "TCFP") adopts the review of Title 37, Texas Administrative Code, Part 13, Chapter 423, Fire Suppression, in accordance with Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11. The proposed rules review was published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10629). No comments were received regarding readoption of the chapter.

The following sections of Chapter 423, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, were reviewed: §423.1 Minimum Standards for Structure Fire Protection Personnel, §423.3 Minimum Standards for Basic Structure Fire Protection Personnel Certification, §423.5 Minimum Standards for Intermediate Structure Fire Protection Personnel Certification, §423.7 Minimum Standards for Advanced Structure Fire Protection Personnel Certification, §423.9 Minimum Standards for Master Structure Fire Protection Personnel Certification, §423.11 Higher Levels of Certification, and §423.13 International Fire Service Accreditation Congress (IFSAC) Certification.

The following sections of Chapter 423, Subchapter B, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, were reviewed: §423.201 Minimum Standards for Aircraft Rescue Fire Fighting Personnel, §423.203 Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification, §423.205 Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification, §423.207 Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification, §423.209 Minimum Standards for Master Aircraft Rescue Fire Fighting Personnel Certification, and §423.211 International Fire Service Accreditation Congress (IFSAC) Certification.

The following sections of Chapter 423, Subchapter C, Minimum Standards for Marine Fire Protection Personnel, were reviewed: §423.301 Minimum Standards for Marine Fire Protection Personnel, §423.303 Minimum Standards for Basic Marine Fire Protection Personnel Certification, §423.305 Minimum Standards for Intermediate Fire Protection Personnel Certification, §423.307 Minimum Standards for Advanced Fire Protection Personnel Certification, and §423.309 Minimum Standards for Master Marine Fire Protection Personnel Certification.

The TCFP determined that the original reasons for adoption of these rules continue to exist. As a result of the review process, the TCFP

adopted amendments to §423.13 International Fire Service Accreditation Congress (IFSAC) Certification. The amendments were adopted in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1533).

TRD-200202391
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

♦ ♦ ♦

The Texas Commission on Fire Protection (the "TCFP") adopts the review of Title 37, Texas Administrative Code, Part 13, Chapter 435, Fire Fighter Safety, in accordance with Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11. The proposed rules review was published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 11057). No comments were received regarding readoption of the chapter.

The following sections of Chapter 435 were reviewed: §435.1 Protective Clothing, §435.3 Self-contained Breathing Apparatus, §435.5 Commission Recommendations, and §435.7 Fire Department Staffing Studies.

The TCFP determined that the original reasons for adoption of these rules continue to exist. As a result of the review process, the TCFP proposed changes to §435.1 Protective Clothing and §435.3 Self-contained Breathing Apparatus. The TCFP also proposed new §435.9 Personal Alert Safety System (PASS), new §435.11 Incident Management System (IMS), new §435.13 Personnel Accountability System, new §435.15 Operating At Emergency Incidents, new §435.17 Procedures for Interior Structural Fire Fighting (2-In/2-Out Rule), and new §435.19 Commission Enforcement of Chapter 435. The proposed changes and new sections were published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10805), and the amendments and new sections were adopted in the March 22, 2002, issue.

TRD-200202392
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 2002

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The Texas Commission on Fire Protection (the "TCFP") adopts the review of Title 37, Texas Administrative Code, Part 13, Chapter 437, Fees, in accordance with Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11. The proposed rules review was published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 11057). No comments were received regarding readoption of the chapter.

Specifically, the following sections of Chapter 437 were reviewed: §437.1 Fees--Purpose and Scope, §437.3 Fees-- Certification, §437.5 Fees--Renewal, §437.7 Fees--Standards Manual and Certification Curriculum Manual; §437.11 Fees-- Copying; §437.13 Fees--Basic Certification Examination; §437.15 Fees--International Fire Service Accreditation Congress (IFSAC) Seal; §437.17 Fees--Records Review; and §437.19 Late Filing Penalty.

The TCFP determined that the original reasons for adoption of these rules continue to exist. As a result of the review process, the TCFP proposed changes to §437.3 Fees--Certification. The proposed rule action was published in the December 28, 2001, issue of the *Texas Register* (26 TexReg 10808), and the amended rule was adopted in the March 22, 2002, issue.

TRD-200202393
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Filed: April 17, 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: 4 TAC §3.72(c)(3)

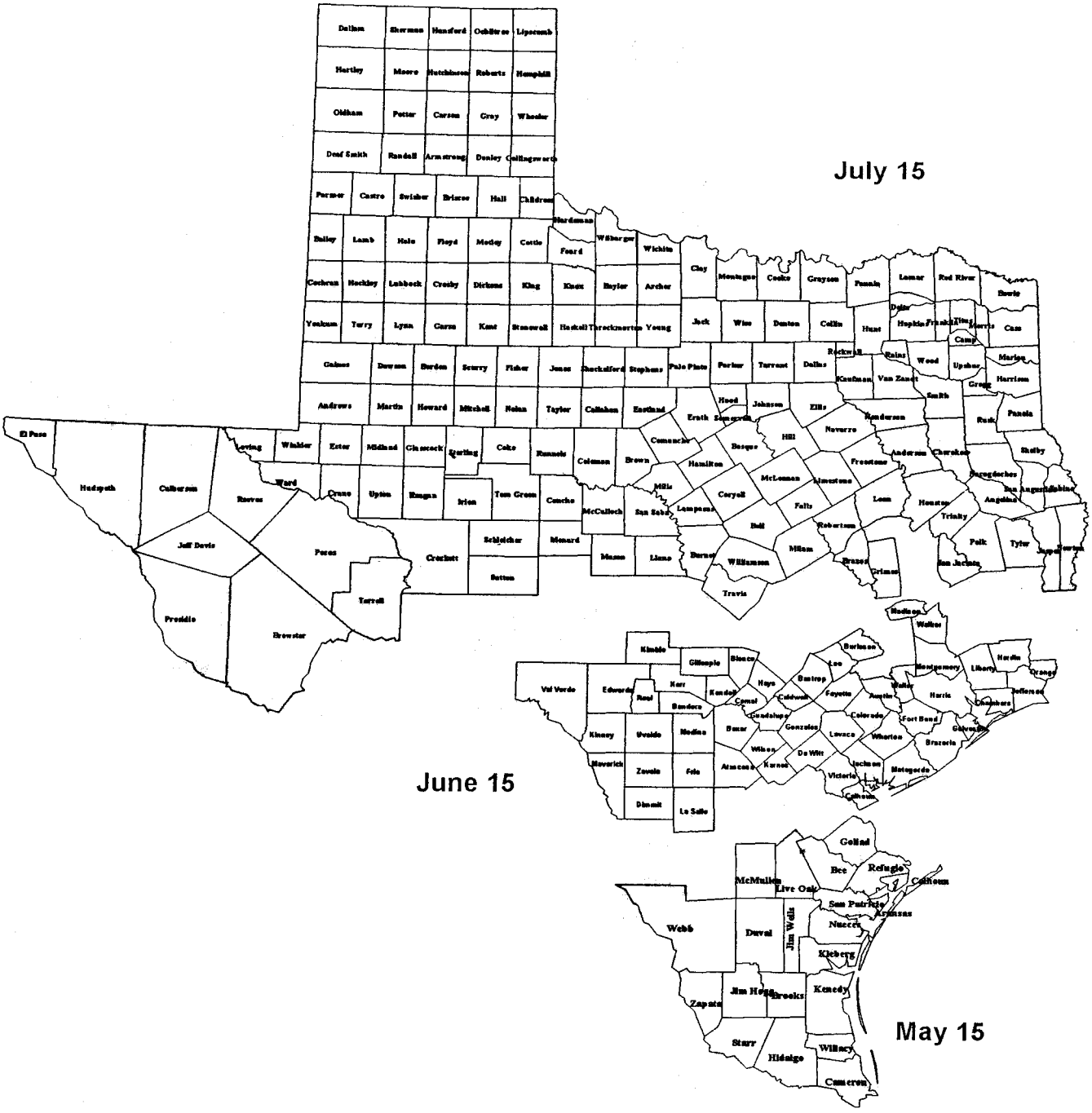

Figure: 30 TAC §101.1(23)

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
Inhalable Particulate Matter (PM_{10})	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
Nitrogen Dioxide	1.0 $\mu g/m^3$				
Carbon Monoxide			0.5 mg/m^3		2 mg/m^3

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 April 5, 2002, through April 11, 2002. The public comment period for these projects will close at 5:00 p.m. on May 17, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: United Oil & Minerals Limited; Location: The project is located in State Tracts (ST) 138, 139, 140, 141, 154, and 155 in Aransas Bay, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled St. Charles Bay SW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 701200; Northing: 3104050. Project Description: The applicant proposes to drill Well #1 in ST 138 and install a well protector platform in the event that production is made. Approximately 4,500 cubic yards of shell, crushed rock or washed gravel fill would be used as a base for the proposed drilling rig. The applicant also proposes to install a 4-inch pipeline from the proposed Well #1 in ST 138 to an existing platform in ST 154 by crossing portions of ST 139, 140, 141, and 155 for a distance of 10,779 feet. The pipeline would be buried a minimum of 3 feet. Approximately 2, 395 cubic yards of material would be displaced during the pipeline installation. According to information from a survey provided by the applicant, no seagrasses, live oysters or shell reefs were found within 550 feet of the proposed well location or within 500 feet of the proposed pipeline route. CCC Project No.: 02-0094-F1; Type of Application: U.S.A.C.E. permit application #22641 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: Rodney Townsend; Location: The project is located in adjacent waters of the Neches river, northwest of the foot of the Highway 87 Rainbow Bridge crossing the Neches River, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur North, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415156; Northing: 3317850. Project Description: The applicant proposes to repair approximately 8,747 feet of levee by utilizing 10,521 cubic yards of excavated material within the levee. The applicant also requests to replace 3 culverts with weir structures and flap gates. Additionally, the applicant proposes to construct a levee along 50 feet of open water on the southwest corner of the project to enclose the structure. The levee will be 16-foot-wide and require 29.6 cubic yards of material. The purpose of the project is to upgrade the property for waterfowl hunting. CCC Project No.: 02-0097-F1; Type of Application: U.S.A.C.E. permit application #22594 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).

Applicant: Roger Quinn; Location: The project is located at a tidal tributary of Cow Bayou at 2829 Garrison in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Orangefield, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415800; Northing: 3328600. Project Description: The applicant proposes to mechanically excavate approximately 1,618 cubic yards of material from a tributary of Cow Bayou. The material will be placed on an upland area on the property. The tributary runs 390 linear feet through the property and is approximately 28 feet wide. The water depth is approximately -2 feet mean low tide. The proposed excavation will increase the depth to -6 feet mean low tide. The purpose of the project is to reduce flooding on the property and clean out debris from the tributary. CCC Project No.: 02-0098-F1; Type of Application: U.S.A.C.E. permit application #22638 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

FEDERAL AGENCY ACTIVITIES:

Applicant: Mineral Management Service; Location: Western Gulf of Mexico; Project Description: The applicant submitted a consistency

determination for the proposed Western Gulf of Mexico Lease Sale 184 (August 2002) for comments and consideration with respect to the Texas Coastal Management Program. CCC Project No.: 02-0096-F2; Applicant: National Marine Fisheries Service; Location: Atlantic pelagic longline fishery; Project Description: The applicant submitted a proposed rule to reduce sea turtle bycatch and bycatch mortality in highly migratory species fisheries for comments and consideration with respect to the Texas Coastal Management Program. CCC Project No.: 02-0103-F2; NOTE: The CMP consistency review for this project may be conducted by the Texas Parks & Wildlife Department.

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-200202373
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 17, 2002

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Comptroller of Public Accounts

Notice of Modification for Request for Qualifications

Modification to Request for Qualifications for Independent Auditing Services for the Texas Comptroller of Public Accounts

Request for Qualifications: Pursuant to Senate Bill 1458, 77th Texas Legislature codified in Subchapter A, Chapter 111, Section 111.0045, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) issues this Modification of the current Request for Qualifications (RFQ #137d) from qualified independent persons or firms to perform certain tax audits. Modifications from the original RFQ are marked in bold print. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform audits that meet the requirements of Section 111.0045, the Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract auditors as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these audits on an as-needed basis. No minimum amount of audits or compensation is guaranteed to any selected contract auditor.

By this contract audit program, the Comptroller intends to increase the number of audits of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with Section 111.0045, the Comptroller's administrative rules and procedures and other applicable law.

The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of 24 hours of accounting, including six hours of intermediate accounting and three hours of auditing, and

(ii) one year of experience in Texas tax auditing, accounting, or other Texas tax services.

The Comptroller will select, in its sole discretion, those qualified contract auditors to perform audits on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract auditors with a preliminary audit package containing the identity and requisite information for each taxpayer that will be audited under the contract. The contracts will provide for a firm fixed price of $50,000 (or multiples thereof) payment to the auditor upon successful completion of the assigned audits (final audit package) and the Comptroller's written acceptance of the audit report and other contract deliverables, including workpapers. Payment will be made in accordance with the terms of the contract. Each such $50,000 contract will require the auditor to perform and complete the audits, including the audit reports, for a group of taxpayers that, based on historical audit completion data, should require about 1066 person hours of work to complete. Auditors will be paid for assigned work completed to date when 20% increments of the audits assigned have been completed, submitted to Comptroller and accepted by Comptroller as provided in the contract.

In performing assigned audits and for the contracted lump sum payments, selected contract auditors will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the audit report. Selected contract auditors will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

The maximum contract amount to any individual person or firm will not exceed six (6) audit packages ($50,000.00 each). As a result, the maximum contract amount for any such individual or firm shall not exceed $300,000.00.

Selected contract auditors must complete all work and submit all audit reports, workpapers and other deliverables no later than required under the terms of the proposed contract.

Selected contract auditors must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned audit.

Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than July 2002 upon completion of orientation or other timeline established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple master contracts as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same master contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample contract. Any resulting contracts are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any audits to recipients of master contract awards.

Questions; Proposed Contract; Proposed Rules: Questions concerning this RFQ must be in writing and submitted via hand delivery or facsimile no later than April 19, 2002, 2:00 pm, Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM

G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Texas Marketplace notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than April 26, 2002 CZT or as soon thereafter as practicable. A copy of the sample master contract and mandatory Execution of Statement of Qualifications Form are included as addenda to the Texas Marketplace notice of issuance of this RFQ.

Closing Date: An original and ten (10) copies of each Statement of Qualifications must be hand delivered to and received in the Office of the Assistant General Counsel, Contracts at the address specified above no later than 2:00 p.m. (CZT), on May 6, 2002. Statements of Qualifications received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax audits; and (b) outlines the respondent's understanding of SB1458, the Texas Tax Code and other related enabling legislation related to conduct of these audits on an as needed basis;

2. Physical address of firm's or individual's business offices and each local audit facility and primary contact person;

3. Vita for each individual who will be involved in the project;

4. A sample Audit Plan providing a listing of the audit procedures and resources that will be utilized to conduct these audits on an as needed basis if selected by the Comptroller. The Audit Plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate audit procedures necessary for verification of correct amounts of tax.

5. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the audits after assignment, including (a) methods for deploying personnel and equipment to perform the audits timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned audits; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment.

6. Disclosures of any partners, associates, employees or individual practitioner who have been employees of the Comptroller within the past twelve (12) months prior to the date of submission of the Statement of Qualifications;

7. Statement of whether the respondent is a Historically Underutilized Business (HUB) and willingness of the respondent to comply with the HUB requirements of the contract;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned audits;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample contract, including, without limitation, the proposed fee arrangements, as posted on the Texas Marketplace; and

10. Completed and Signed Execution of Statement of Qualifications Form.

Mandatory Orientation Sessions: Respondents must attend, at their sole cost and expense, mandatory orientation sessions to be conducted by the Comptroller in Dallas and Houston during June 2002. Questions regarding these mandatory sessions should be submitted prior to the deadline below for submission of other written questions on this RFQ.

Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on qualifications, experience, Workplan and agreement to the sample contract and fees. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Notice of contract awards will be published in the Texas Marketplace as soon as possible after all contracts, if any, resulting from this Statement of Qualifications, are fully executed.

Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller is not obligated to execute any contract or contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of auditors for any assigned audits under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller currently has sufficient numbers of auditors in the Lubbock area consisting of Parmer, Lamb, Cottle, Dickens, Lynn, Dawson, Castro, Hale, Cochran, King, Garza, Borden, Swisher, Floyd, Hockley, Yoakum, Kent, Scurry, Bailey, Motley, Lubbock, Terry, Gaines, and Fisher counties. Respondents living in these counties choosing to submit Statements of Qualification would be eligible to perform audits in other areas but would be required to travel at their own expense and without additional compensation.

Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ, including sample contract, on Texas Marketplace-April 5, 2002, 2:00 p.m. CZT; ; Questions -April 19, 2002, 2:00 p.m. CZT; Posting of Official Responses to Questions-April 26, 2002, 2:00 p.m. CZT; Statements of Qualifications Due -May 6, 2002, 2:00 p.m. CZT; Contract Execution -May 31, 2002, or as soon thereafter as practical; Notice of Contract Awards posted on Texas Marketplace June 5, 2002, or as soon thereafter as practical; Mandatory Orientation-Dallas/Houston, June 2002; and Beginning of Audits-July 2002 upon completion of Mandatory Orientation, or as soon thereafter as practicable.

TRD-200202369
Clay Harris
Assistant General Counsel Contracts
Comptroller of Public Accounts
Filed: April 17, 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 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 04/22/02 - 04/28/02 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 04/22/02 - 04/28/02 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 05/01/02 - 05/31/02 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 05/01/02 - 05/31/02 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-200202342
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 16, 2002

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Credit Union Department

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from East Texas Professional Credit Union, Longview, Texas to expand its field of membership. The proposal would permit individuals who live or work in Smith County, Texas to be eligible for membership in the credit union.

An application was received from Ward County Teachers Credit Union, Monahans, Texas to expand its field of membership. The proposal would permit persons who live, work or are located in Ward County, Texas and the area in Pecos County, Texas that includes the Buena Vista Independent School District to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200202344
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 16, 2002

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Community Credit Union (7 applications), Plano, Texas -See *Texas Register* issue dated January 25, 2002.

The Educators Credit Union, Waco, Texas - See *Texas Register* issue dated January 25, 2002.

Members First Credit Union, Corpus Christi, Texas, (Nueces County) - See *Texas Register* issue dated January 25, 2002.

Members First Credit Union, Corpus Christi, Texas, (Amended) Persons who live or work in Cameron County, Texas.

San Antonio Teachers Credit Union, San Antonio, Texas - See *Texas Register* issue dated January 25, 2002.

Star One Credit Union, Sunnyvale, California (Sitel Corporation) - See *Texas Register* issue dated January 25, 2002.

Telco Plus Credit Union, Longview, Texas - See *Texas Register* issue dated January 25, 2002.

TRD-200202345
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 16, 2002

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Texas Department of Criminal Justice

Award Notice

The Texas Department of Criminal Justice publishes this notice of a contract award to:

E.D Calvert, Calvert Paving Co., 5326 Bidy Bye Lane, Denton, Texas 76201.

Notice to Bidders for the Gainesville paving repair and drainage improvement project (696-TY-2-B019) was published in the January 25, 2002 edition of the *Texas Register* (27 TexReg 642). The contract number is 696-TY-2-3-C0182. This was a full award for the amount of $147,135.00.

TRD-200202298
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2002

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Cancellation Notice

Solicitation: 696-FD-2-B023 (Waste Cleanup at Oyster Creek)

Reason for Cancellation: Scope of Work revised.

TRD-200202299
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2002

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Corrected Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of Parking Lot and Roadway Improvements at Dayton, Texas. The project consists of repair and roadway improvements of an existing staff vehicle parking lot, a section of existing perimeter road and a section of an entrance road. The work includes the paving of the parking

lot, perimeter road, entrance road, the installation of storm drainage pipe and the restoration by grading and the re-vegetation of the disturbed grassed areas at the existing Hightower Unit, Rt. 3 Box 9800, Dayton, Texas. The work includes civil, mechanical, concrete and steel as further shown in the Contract Documents prepared by O'Connell Robertson & Assoc., Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of **5 (five)** consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

C. Contractors are required to submit a HUB Subcontracting Plan as detailed in Exhibit I. Failure to submit a completed HUB Subcontracting Plan will result in the bid being rejected from further consideration.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of **$75.00 (Seventy-five dollars), non-refundable,** per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer :

O'Connell Robertson & Assoc., Inc.

Attn: Noel Robertson

811 Barton Springs Road, Suite 900

Austin, Texas 78704

Phone: 512 478-7286; Fax: 512 478-7441

A Pre-Bid conference will be held at **10:30 a.m.** on **May 15, 2002** at the Hightower Unit, Dayton, Texas, followed by a site-visit. **ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at **2:00 p.m.** on **May 29, 2002**, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least **11.9%** of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200202368
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 17, 2002

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Deep East Texas Local Workforce Development Board

Request for Quotes

MINIMUM SPECIFICATIONS:

The Deep East Texas Local Workforce Development Board, Inc. (Board) is seeking a qualified person or group of persons to facilitate a one-day session with Board members, executive staff, and other parties the Board may include, to revise the Board's 2001-2004 strategic goals, strategies, and outcomes with a strong emphasis on implementing a business-driven system and continuous improvement to coordinate with the goals of the Texas Council on Workforce and Economic Competitiveness and comply with Texas SB 642 and HB 1863; the Workforce Investment Act; Texas state plans for workforce programs, and the Board's contract with the Texas Workforce Commission. The Board staff will be responsible for meeting logistics.

The Board was organized in October 1996 under Texas SB 642 and HB 1863 to plan and oversee an integrated workforce system in the Deep East Texas Workforce Development Area (WDA). The WDA is a 12-county, rural area. All 12 counties are represented on the Board. Workforce programs under the Board's purview are the Workforce Investment Act, TANF/Choices, Welfare-to-Work, Food Stamp Employment and Training, and subsidized child care. The local system includes all partners required by Texas legislation among others. Additional information on the Board can be accessed at the Board's website www.detwork.org.

Qualified persons will have extensive experience in strategic planning for non-profit/public organizations and, in particular, workforce boards; and will be knowledgeable of the Texas Workforce Network and Federal and Texas workforce legislation.

Interested parties must submit the following minimum information:

Professional qualifications, including past experience

Three recent (last three years) references

Proposed approach and format

Potentially available dates in September, October, and November 2002

Requirements (e.g., space, equipment, information to be provided by Board or Board staff)

Proposed cost, including travel

The minimum information must be received in our office no later than 5:00 PM, CST, Wednesday, May 8, 2002, to:

Chris Gaston

1318 S. John Redditt Drive, Suite C

Lufkin, TX 75904

Phone: 936-639-8898

Fax: 936-639-7491

Email: chris.gaston@twc.state.tx.us

Offers may be submitted by U.S. mail or other courier, fax, or email. The anticipated date for selection is May 14, 2002. The selected person(s) will be provided with the Board's strategic goals, progress, plan, performance information, contracts, or other information needed to develop the local presentation.

Equal Opportunity Employer/Programs

TRD-200202363
Charlene Meadows
Executive Director
Deep East Texas Local Workforce Development Board
Filed: April 17, 2002

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Texas Education Agency

Request for Applications Concerning Adult Education and Literacy

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-017 from eligible providers of adult education and literacy services. Under the Workforce Investment Act of 1998 (Public Law 105-220), Title II, Adult Education and Literacy, §203(5), eligible providers are: local educational agencies; community-based organizations of demonstrated effectiveness; volunteer literacy organizations of demonstrated effectiveness; institutions of higher education; public or private nonprofit agencies; libraries; public housing authorities; nonprofit institutions not described previously that have the ability to provide literacy services to adults and families; and a consortium of the agencies, organizations, institutions, libraries, or authorities described previously. Under state law (Texas Education Code, §29.252), eligible providers of adult education and literacy services are: public school districts; education service centers; public junior colleges; public universities; public nonprofit agencies; and community-based organizations approved in accordance with state statutes and with rules adopted by the State Board of Education (SBOE). For-profit entities are not eligible providers.

The Texas State Plan for Adult Education and Family Literacy and SBOE rules (19 TAC Chapter 89, §89.21(6)) require that applicants have at least one year of experience in providing the adult education and literacy services proposed in the application. Applicants that are not public education entities must submit indicators of financial stability with the application to TEA. All nonprofit organizations, including public charter schools, are required to submit proof of nonprofit status.

All applications for state and federal adult education programs are to be submitted on TEA Standard Application System forms (SAS A-331) which are provided in the RFA. Conditions for submittal of applications and funding are contained in the RFA.

Description. The overall purpose of the federal adult education program is to assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; assist adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and assist adults in the completion of their secondary school education. The adult education program in Texas provides literacy, English language proficiency for limited English proficient adults, basic academic and functional context skills, and secondary level proficiencies for out-of-school youth and adults who are beyond the age of compulsory school attendance and who function below a secondary completion level.

Eligible applicants apply directly to TEA for state and federal funds to provide adult education and literacy services. Eligible providers are encouraged to maximize the fiscal resources available for service to undereducated adults and avoid unproductive duplication of services and excessive administrative costs by forming consortia or cooperatives and using fiscal agents as authorized by federal regulations and SBOE rules.

Successful applicants must agree to submit individual student data in TEA's adult education management information system, ACES; implement the adult education assessment system as described in the RFA; and report expenditures as described in the RFA.

A teleconference to provide information to potential applicants for adult education funds will be held via the Texas Educational Telecommunications System (TETN) on Wednesday, May 1, 2002, from 9 a.m. until 12:45 p.m. Any individual wishing to participate in the teleconference can attend at the closest education service center (ESC) facility. Information related to the 20 ESCs may be found at http://www.tea.state.tx.us./ESC/. Information on registering for the workshop may be obtained by calling (512) 463-9294. Workshop participants must register for the teleconference no later than 5:00 p.m. on Monday, April 29, 2002. A videocassette of the teleconference will be made available at no cost upon request to potential applicants who are not able to attend the TETN teleconference. To ensure that each potential applicant is provided with the same information, all potential applicants are strongly encouraged either to attend the TETN teleconference or to request the videotape of the teleconference. TEA assumes no liability for potential applicants who do not either attend the TETN teleconference or request the videotape of the conference.

Dates of Project. The Adult Education Program will be implemented during fiscal year 2002-2003. Applicants should plan for a starting date of no earlier than July 1, 2002, and an ending date of no later than August 31, 2003.

Project Amount. Eligible providers may compete for federal and state adult education funds allocated to each school district region to provide services to: a school district region, a portion of a school district region (based on the numbers of undereducated adults to be served), multiple school district regions, a county, a portion of a county, or multiple counties to serve adults from that geographic area. This project is funded 79.3% from federal funds ($33,231,759) and 20.7% from non-federal sources ($6,885,700).

Selection Criteria. Awards will be considered on the basis of total points awarded. Criteria for awarding points are contained in the RFA. Applicants must achieve an overall score of 70 and address all requirements satisfactorily in order to be considered for funding. In the review process, special emphasis will be placed on ensuring that applicants place priority on recruiting and serving educationally disadvantaged adults, especially those who are most in need of literacy services, including low-income adults and those with minimal literacy skills.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to the RFA. The RFA does not commit TEA to pay any costs before an application is approved. The issuance of the RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-02-017 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing the request to (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2/cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Mr. Juan Perez, Division of Adult and Community Education, TEA, (512) 463-9294.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, June 4, 2002, to be considered for funding.

TRD-200202374
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: April 17, 2002

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Request for Applications Concerning Public Charter Schools Dissemination Grant

The Texas Education Agency (TEA) published Standard Application System (SAS) #A540 concerning public charter schools in the March 29, 2002, issue of the *Texas Register* (27 TexReg 2581). The TEA is amending the *Texas Register* notice as follows:

(1) The TEA is amending the Project Amount paragraph to read, "Funding will be provided for the charter schools that have had three years of successful operation and that meet the eligibility criteria. Not more than two grants will be awarded in an amount not to exceed $400,000 each for two years for activities (f) through (g) as previously listed. It is anticipated that 8 to 10 grants will be awarded not to exceed $40,000 for each year for activities (a) through (e). Any applicant submitting a budget in the amount of $40, 001 to $349,999 will not be accepted or considered for funding. Applicants awarded dissemination grants for the 1999-2000 school year and the 2001-2002 school year are eligible for one additional year of funding. Project funding in any subsequent year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the SBOE and the commissioner of education and grant award and appropriations by the U.S. Congress. This project is funded 100% from the Public Charter Schools federal funds. It is estimated that approximately 12 dissemination grants will be awarded."

(2) The TEA is amending the Dates of Project paragraph to read, "The federal Public Charter Schools Dissemination Grant Program will be implemented between June 1, 2002, and June 14, 2004. Applicants should plan for a starting date of no earlier than June 1, 2002, and an ending date of no later than June 14, 2004." This amendment reflects a change in the implementation date and the starting date from June 15, 2002, to June 1, 2002, and a change in the ending date from June 15, 2004, to June 14, 2004.

Further Information. For clarifying information about the SAS, contact Esther Murguia, Division of Charter Schools, TEA, (512) 463-9575.

TRD-200202375
Cristina De La-Fuente Valadez
Manager, Policy Planning
Texas Education Agency
Filed: April 17, 2002

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Office of the Governor

Request for Grant Applications (RFA) for Drug Courts

The Criminal Justice Division (CJD) of the Governor's Office announces the availability of grants for eligible drug court programs.

Purpose: The purpose of the funding is to support drug court programs as defined in Section 469.001, Texas Health and Safety Code, which include the following essential characteristics: (1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system; (2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants; (3) Early identification and prompt placement of eligible participants in the program; (4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services; (5) Monitoring of abstinence through weekly alcohol and other drug testing; (6) A coordinated strategy to govern program responses to participant's compliance; (7) Ongoing judicial interaction with program participants; (8) Monitoring and evaluation of program goals and effectiveness; (9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and, (10) Development of partnerships with public agencies and community organizations.

Available Funding: State funding is authorized for these projects from amounts appropriated from the State of Texas General Revenue Fund. Total funding available for fiscal year 2003 under this RFA is $750,000. Based on the potential number of eligible applicants, funding requests may be made for up to $107,143. Applicants will be notified if additional funding is available after all applications are reviewed by CJD.

Standards: Grantees must comply with the applicable standards adopted under Title 1, Part 1, Chapter 3, Texas Administrative Code, as well as meet the applicable requirements established in the 2002-2003 Biennium General Appropriations Act.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship, or to supplant federal, state, or local funds.

Eligible Applicants: Eligible applicants are counties that meet the following criteria: (1) Pursuant to Section 469.006, Health and Safety Code, a county with a population of 550,000 is eligible if, prior to September 1, 2001, the county had established a drug court program; or, (2) The county commissioner's court established a drug court on or after September 1, 2001 and has applied to the U.S. Department of Justice, Drug Courts Program Office for drug court funding. (3) Funding can be made for enhancement of an existing drug court or existing drug court operations. (4) If the funding is for existing drug court operations and/or the applicant applies for federal and state funding, the applicant must ensure that grant funds will not be used to supplant federal, state, or local funds.

Project Period: Grant-funded projects must begin on or after October 1, 2002 and will expire on or before September 30, 2003.

Application Process: Interested parties should request an application from the Office of the Governor, Criminal Justice Division, P. O. Box 12428, Austin, TX 78711, telephone (512) 475-4461, or visit the CJD web page on the Governor's Office website at http://www.governor.state.tx.us.

Preferences: Preference will be based on eligibility.

Closing Date for Receipt of Applications: Applications must postmarked or be received at CJD by June 1, 2002. Mail applications to Grants Administration, Criminal Justice Division, Office of the Governor, Post Office Box 12428, Austin, TX 78711. Applications may be mailed overnight to 1100 San Jacinto, Austin, TX 78701.

Selection Process: Completed applications will be reviewed by CJD staff and awarded based on eligibility and available funding. The executive director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Dan Glotzer at (512) 463-1919.

TRD-200202371
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: April 17, 2002

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Texas Department of Health

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Amarillo Medical Specialists LLP	L05525	Amarillo	00	04/10/02
Duncanville	Duncanville Medical Center Inc.	L05471	Duncanville	00	04/02/02
Throughout Tx	C3S Inc.	L05537	Houston	00	04/04/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	NC-SCHI Inc.	L02434	Abilene	68	04/12/02
Alvin	Amoco Chemical Company	L01422	Alvin	54	04/08/02
Aransas Pass	North Bay General Hospital	L03466	Aransas Pass	21	04/05/02
Arlington	Metroplex Hematology Oncology Associates	L03211	Arlington	64	04/09/02
Arlington	Metroplex Hematology Oncology Associates	L03211	Arlington	65	04/12/02
Arlington	Arlington Memorial Hospital Foundation Inc.	L02217	Arlington	70	04/15/02
Austin	Columbia St Davids Healthcare System LP	L03273	Austin	46	04/04/02
Austin	Seton Medical Center	L02896	Austin	64	04/04/02
Austin	HTI/ADC Venture	L04910	Austin	28	04/12/02
Austin	Columbia St Davids Healthcare System LP	L03273	Austin	45	03/28/02
Austin	South Austin Cancer Center	L05108	Austin	04	04/08/02
Bedford	Columbia North Hills Hospital Subsidiary LP	L03455	Bedford	32	04/05/02
Clarksville	East Texas Medical Center Clarksville	L02978	Clarksville	16	04/11/02
Corpus Christi	Riverside Hospital Inc.	L02977	Corpus Christi	32	04/02/02
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	33	04/10/02
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	32	04/03/02
Dallas	Environmental Health Center – Dallas	L05327	Dallas	01	04/03/02
Dallas	Dallas Cardiology Associates	L04607	Dallas	31	03/29/02
Dallas	Presbytherian Hospital of Dallas	L01586	Dallas	78	03/29/02
Dallas	Kindred Hospitals Limited Partnership	L03503	Dallas	14	04/09/02
Dallas	Texas Oncology PA	L04878	Dallas	22	04/11/02

Denton	Tanveer A. Qureshi MD PA	L04815	Denton	02	03/29/02
Denton	Columbia Medical Ctr of Denton Subsidiary LP	L02764	Denton	49	04/11/02
El Paso	El Paso Healthcare System LTD	L02715	El Paso	45	04/08/02
Fort Worth	Radiology Associates of Tarrant County PA	L05387	Fort Worth	01	04/01/02
Fort Worth	Texas Christian University	L01096	Fort Worth	33	04/01/02
Fort Worth	Computalog Wireline Products Inc.	L00747	Fort Worth	64	04/09/02
Fort Worth	Syncor International Corporation	L02905	Fort Worth	59	04/10/02
Fort Worth	Fort Worth Medical Plaza Inc.	L02171	Fort Worth	42	04/12/02
Garland	Garland Physicians Hospital LTD	L02333	Garland	24	04/09/02
Haltom City	21st Century Technologies Inc.	L05013	Haltom City	05	04/10/02
Houston	Texas Biotechnology Corporation	L04568	Houston	13	03/29/02
Houston	Veterinary Cancer Associates	L04803	Houston	08	03/29/02
Houston	CHCA Womans Hospital LP	L04834	Houston	10	04/04/02
Houston	Richmond Imaging Affiliates LTD	L05455	Houston	03	04/05/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System	L01168	Houston	66	04/02/02
Houston	Baker Hughes Oilfield Operations Inc.	L05104	Houston	07	03/29/02
Houston	Houston Northwest Medical Center	L02253	Houston	52	03/29/02
Houston	Ben Taub General Hospital	L01303	Houston	53	04/08/02
Houston	Medical Clinic of Houston LLP	L01315	Houston	30	04/10/02
Houston	Saint-Gobain Ceramics and Plastics	L04895	Houston	04	04/10/02
Houston	Valentina Ugolini MD	L05093	Houston	07	04/10/02
Jacksonville	Regional Health Care Center	L05362	Jacksonville	06	04/08/02
Katy	St Catherine Health and Wellness Center	L05310	Katy	04	04/05/02
Lubbock	Covenant Health System	L04881	Lubbock	26	04/02/02
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	12	04/04/02
Midland	The University of Texas System	L04648	Midland	04	04/02/02
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	27	04/04/02
Odessa	Physician Reliance Network Inc.	L05140	Odessa	02	04/08/02
Orange	Baptist Hospitals of Southeast Texas	L01597	Orange	25	04/05/02
Pampa	Mundy Maintenance and Service LLC	L04360	Pampa	22	03/21/02
Paris	Advanced Heart Care PA	L05290	Paris	04	04/02/02
Pasadena	Albemarle Corporation	L04072	Pasadena	14	04/03/02
Plano	Presbytherian Hospital of Plano	L04467	Plano	23	04/08/02
San Antonio	MEDLAB	L04824	San Antonio	06	04/08/02
San Antonio	CTRC	L01922	San Antonio	61	04/05/02
San Antonio	Cardiovascular Associates of San Antonio PA	L04996	San Antonio	02	04/04/02
San Antonio	University of Texas at San Antonio	L01962	San Antonio	45	03/29/02

San Antonio	Methodist Healthcare System of San Antonio LTD	L05440	San Antonio	01	04/08/02
San Antonio	US Diagnostic Inc.	L04968	San Antonio	16	04/10/02
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	162	04/12/02
Throughout Tx	Conam Inspection	L05010	Pasadena	48	03/29/02
Throughout Tx	Scientific Drilling International	L05105	Houston	04	03/29/02
Throughout Tx	Mandes Inspection & Testing Services Inc.	L05220	Houston	23	04/02/02
Throughout Tx	Petrochem Inspection Services	L04460	Houston	54	04/02/02
Throughout Tx	Professional Service Industries Inc.	L03924	McKinney	17	04/04/02
Throughout Tx	Conam Inspection	L5010	Pasadena	49	04/04/02
Throughout Tx	Kellogg Brown & Root Inc.	L03391	Houston	27	04/08/02
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	34	04/10/02
Throughout Tx	CB&I Constructors Inc.	L01902	The Woodlands	52	04/10/02
Throughout Tx	Syncor International Corporation	L02048	Dallas	104	04/10/02
Throughout Tx	Ruiz Testing Services Inc.	L04948	San Antonio	08	04/10/02
Throughout Tx	Mundy Maintenance and Service LLC	L04360	Pampa	23	04/10/02
Throughout Tx	D Arrow Inspection	L03816	Houston	68	04/11/02
Throughout Tx	CB&I Contructors Inc.	L01902	The Woodlands	53	04/12/02
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	09	04/03/02
Tyler	Trinity Mother Frances Health System	L01670	Tyler	93	04/12/02
Waco	Waco Radiology Clinic PA	L05324	Waco	02	04/04/02
Weatherford	Parker County Hospital District	L02973	Weatherford	14	04/04/02
Webster	CHCA Clear Lake LP	L01680	Webster	50	04/05/02
Webster	Bharat Patel MD PA	L05444	Webster	02	03/29/02
Wharton	Wharton Hospital Corporation	L01388	Wharton	38	03/29/02
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	39	04/05/02
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	38	04/02/02

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Perryton	Street & Associates Inc.	L04581	Perryton	03	04/05/02
Port Arthur	Huntsman Corporation	L04067	Port Arthur	13	04/10/02
Rowlett	Lake Pointe Partners LTD	L04060	Rowlett	10	04/11/02
Throughout Tx	Encon International Inc.	L04528	El Paso	09	04/08/02
Throughout Tx	City of Weatherford Community Development	L04571	Weatherford	06	04/09/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Texas Research Institute Inc.	L02632	Austin	13	04/03/02
Corpus Christi	Coastal Refining and Marketing Inc.	L01268	Corpus Christi	24	04/02/02
Lamesa	Chickasha Cotton Oil Company	L02646	Lamesa	05	04/03/02

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-200202362

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 17, 2002

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Notice of Intent to Revoke the Certificate of Registration of R.B. Russell, D.D.S.

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: R. B. Russell, D.D.S., Dallas, R17997.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate 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 items in the complaint are not corrected, the certificate 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-200202237
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 11, 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: Robert J. Dennington, D.D.S. M.S.D., Inc., Plano, R05565; Robert M. Primo, D.D.S., Houston, R15446; Highpoint Dental, Inc., Dallas, R16323; Gary Job Corps Center, San Marcos, R20644; Riverside General Hospital, Houston, R01757; Bay Area Rehabilitation Center, Corpus Christi, R21467; Columbia Medical Center Las Colinas, Inc., Irving, R23561; L-Five, Inc., Garland, R21385; SOHS Ltd, Houston, R25788; Healthquest Chiropractic & Wellness Center PC, Flower Mound, R25140; Laser Technetics, Houston, Z01336; Nicolet Imaging Systems, San Diego, California, R14450; Pennzoil Quaker State Company, Houston, R07640; Valley Veterinary Hospital, Edinburg, R01150; Columbia Medical Center of Plano, Plano, Z00295; The Medical Group of Texas, P.A., Fort Worth, Z00953.

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-200202235
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 11, 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: Warrington, Incorporated, Austin, L03074; Baker Oil Tools, Houston, L03272; Columbia Medical Center Las Colinas, Irving, L05084; Memorial Village Surgery Center, Houston, L05272.

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-200202238
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 11, 2002

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Gilbert Texas Construction, L.P.

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 Gilbert Texas Construction, L.P. (licensee-L04569) of Fort Worth. A total penalty of $6,000 is proposed to be assessed to the licensee for alleged violations of radioactive materials license conditions and 25 Texas Administrative Code, §§289.252 and 289.202.

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-200202239
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 11, 2002

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Notice of Revocation of the Certificate of Registration of Jerry Watkins, R.T., dba Cornerstone Mobile X-Ray

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificate of registration: Jerry Watkins, R.T., doing business as Cornerstone Mobile X-Ray, Wichita Falls, R26203, March 27, 2002.

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-200202236
Susan Steeg
General Counsel
Texas Department of Health
Filed: April 11, 2002

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on its draft PY 2003 Low-Income Energy Efficiency Plan funded by the System Benefit Fund.

The public hearing will be held at 2:00 p.m. on Thursday, May 9, 2002, in Room 1-100 of the Travis Building, 1701 North Congress Avenue, Austin, Texas. At the hearing, a representative from TDHCA will provide descriptions of the TDHCA Low-Income Energy Efficiency Plan energy efficiency programs and the intended use of the PY 2003 funds.

The System Benefit Fund (SBF) was established as part of Senate Bill 7, which restructured the electrical industry. The purpose of the SBF is to provide special assistance to low-income residential electric customers in paying their energy bills by providing a discount (approximately 10% discount) and reducing their energy consumption through weatherization; to offset lost revenue for school districts from the devaluation of electric generating plants; and to educate the public on "customer choice" in the restructuring of electric utilities. Measures established in the bill to assist low-income residential consumers include energy efficiency programs to be administered by the TDHCA in coordination with existing weatherization programs. The targeted energy efficiency programs would serve low-income electric customers not served by municipally owned utilities or electrical cooperatives that have not adopted customer choice. The SBF is to be funded through a non-bypassable fee and will be administered by the Public Utility Commission (PUC).

The Public Utility Commission released rules for SBF energy efficiency programs to allow broad latitude for program structure as long as the goal of increasing the low income consumer's energy efficiency is achieved. The plan will provide information regarding the proposed activities of the program implementation for the program year 2003. The Department plans to continue administering the SBF energy efficiency programs through the Weatherization Assistance Program (WAP) subgrantees, which will continue to coordinate the programs with WAP. TDHCA plans to continue operating three targeted energy efficiency programs and one pilot program. The programs consist of the Piggyback Weatherization Assistance Program, the Energy Efficient Refrigerator Program, the Compact Fluorescent Light and Water Saver Program, and the Passive Solar Water Pre-Heater Pilot Project.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the TDHCA PY 2003 Low-Income Energy Efficiency Plan. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on Thursday, May 16, 2002, to Ms. Lolly Caballero, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 600, Austin, Texas 78701 or by electronic mail to lcaballe@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed state plan may be requested by calling Ms. Caballero at (512) 475-0471 or by writing Ms. Caballero at the TDHCA address given above. The proposed draft plan will be available May 2, 2002.

Individuals who require auxiliary aids or services for this meeting should contact Ms. 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-200202397
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 17, 2002

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Texas Department of Human Services

Public Hearing

The Texas Department of Human Services (DHS) will conduct a public hearing to receive comments on the method in which the agency counts child support in the Temporary Assistance for Needy Families-State Program (TANF-SP). The public hearing will be held on May 22, 2002, at 10:00 a.m. in the Public Hearing Room at DHS, Winters Building, 701 W. 51st Street, Austin, Texas.

In addition, comments may be submitted during the public comment period, which begins April 26, 2002, and ends May 22, 2002. Comments must be submitted in writing to Texas Department of Human Services, Eric McDaniel, Mail Code W-312, P.O. Box 149030, Austin, Texas 78714-9030. Comments may also be submitted electronically to eric.mcdaniel@dhs.state.tx.us. For additional information, contact Eric McDaniel at (512) 438-2909.

Individuals who require auxiliary aids or services for this hearing should contact Eric McDaniel at (512) 438-2909 by May 13, 2002, so that appropriate arrangements can be made.

TRD-200202361

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: April 17, 2002

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Texas Health and Human Services Commission

Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces this Request for Proposals (RFP) for provision of consulting services to HHSC. The mission of HHSC in this RFP is to achieve substantial, measurable, and sustainable savings in the cost of operating equipment necessary or convenient to the operation of Texas health and human services (HHS) agencies. HHSC intends to accomplish this mission by contracting with one or more qualified entities that will assist HHSC and HHS agencies to generate cost savings associated with equipment maintenance; increase agency productivity and efficiency by reducing equipment downtime; and maximize the long-term investment of state and federal funds in equipment obtained for the use of HHS agencies.

This RFP is issued to invite potential contractors to submit proposals to: accurately assess HHS agencies' current equipment maintenance costs and needs; identify best practices that will minimize waste in delivery of equipment maintenance services, generate immediate and long-term savings associated with improvement in equipment maintenance, increase productivity and efficiency of agency personnel and operations, maximize the long-term investment of funds by reducing the total cost of equipment purchases; ensure continuous improvement of quality, cost-efficiency, and customer satisfaction in equipment maintenance services; assist HHSC and HHS agencies to identify qualified service providers to implement equipment maintenance best practices on a demonstration basis; and assume responsibility for achieving specific, measurable results that achieve HHSC's mission in this RFP.

The successful respondent(s), if any, will be expected to begin performance of the contract on or about June 1, 2002. The term of the services agreement(s), if any, resulting from this RFP will consist of a six-month assessment period, followed by the initial one-year pilot period. HHSC will have the option to renew annually for up to five additional years.

The RFP will be available on the HHSC website: http://www.hhsc.state.tx.us, under the "Announcements" link, http://www.hhsc.state.tx.us/news/announce.html, after 5:00 p.m. Central Time, April 19, 2002, or as soon thereafter as possible.

Parties interested in submitting a proposal should contact Donna Sheppard, Health and Human Services Commission, 4900 North Lamar, 3rd Floor, Austin, Texas, 78751, telephone number: (512) 424-6635, fax number: (512) 424-6641, regarding the request. HHSC will provide printed copies of the RFP or further information concerning the RFP only to those specifically requesting it. All questions must be received in writing at the above address by 3:00 p.m., Central Time, on May 3, 2002. Respondents are solely responsible for confirming the timely receipt of their questions.

Deadline for Proposals: To be considered, all proposals must be received at the foregoing address in the issuing office on or before 3:00 p.m., Central Time, on May 17, 2002. Proposals received after this time and date will not be considered. Respondents are solely responsible for confirming the timely receipt of their proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted; to award one or more contracts to qualified respondents; to waive minor technicalities and to make award(s) in the best interest of the State. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC shall pay for no costs incurred by any entity in responding to this RFP.

Non-Mandatory Pre-Proposal Conference: A pre-proposal conference will be held in Austin, Texas, on or about May 1, 2002. The exact time and place will be posted to the HHSC website. Attendance at the pre-proposal conference is not a requirement for submitting a proposal.

The anticipated schedule of events is as follows: Issuance of RFP - April 19, 2002; Non-Mandatory Pre-Proposal Conference - May 1, 2002; Deadline for submitting questions concerning the RFP - May 3, 2002; Deadline for Proposals - 3:00 p.m., May 17, 2002; Contract Execution - May 31, 2002, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2002.

TRD-200202379
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: April 17, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of THE TRAVELERS INDEMNITY COMPANY OF MISSOURI to TRAVELERS COMMERCIAL CASUALTY COMPANY, a foreign Fire and/or Casualty Company. The home office is in Hartford, Connecticut.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200202352
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 16, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Trinity Universal Insurance Company of Kansas, Inc. proposing to use rates for commercial 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 percentages of +37% for Personal Injury Protection, Liability, and Physical Damage coverages, under all classes and territories. This overall rate change is +5.4%.

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 May 10, 2002.

TRD-200202341

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 15, 2002

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Starmount Financial Corporation, Inc., a foreign third party administrator. The home office is Baton Rouge, Louisiana.

Application for admission to Texas of Computer Health Network, Inc., a foreign third party administrator. The home office is Schaumburg, Illinois.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200202372
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 17, 2002

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Texas Lottery Commission

Instant Game Number 284 "Deuces Wild"

1.0 Name and Style of Game.

A. The name of Instant Game No. 284 is "DEUCES WILD". The play style is "match 2 of 5 with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 284 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 284.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $1.00, $2.00, $3.00, $4.00, $5.00, $10.00, $25.00, $50.00, $100, and $2,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: 16 TAC GAME NO. 284 - 1.2D

Figure 1: GAME NO. 284 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$2,000	TWO THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: 16 TAC GAME NO. 284 - 1.2E

Figure 2: GAME NO. 284 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $400.

I. High-Tier Prize - A prize of $2,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (284), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 284-0000001-000.

L. Pack - A pack of "DEUCES WILD" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DEUCES WILD" Instant Game No. 284 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DEUCES WILD" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) play symbols. If a player match 2 like cards in any one hand across, the player will win the prize shown for that hand. If a player matches 2 like cards plus a "2" symbol, the player will win double the prize shown for that hand. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 24 (twenty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 24 (twenty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 24 (twenty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No duplicate non-winning prize symbols on a ticket.

C. There will be no occurrence of a hand containing a winning poker hand other than a pair or a pair plus a "2" symbol. (No 3 of a kind, 4 of a kind, full house, or straight.)

D. The "2" symbol will only appear on a winning hand and will never occur more than once on a ticket as dictated by the prize structure.

E. No 5 or more like Your Card play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DEUCES WILD" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $25.00, $50.00, $100, or $400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "DEUCES WILD" Instant Game prize of $2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DEUCES WILD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DEUCES WILD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DEUCES WILD" Instant Game, the Texas

Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,237,500 tickets in the Instant Game No. 284. The approximate number and value of prizes in the game are as follows:

Figure 3: 16 TAC GAME NO. 284- 4.0

Figure 3: GAME NO. 284 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,419,507	8.62
$2.00	587,434	20.83
$4.00	244,715	50.01
$5.00	146,875	83.32
$10.00	122,374	100.00
$25.00	31,830	384.46
$50.00	10,244	1,194.60
$100	1,681	7,279.89
$400	300	40,791.67
$2,000	103	118,810.68

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 284 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 284, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202220

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 10, 2002

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Instant Game Number 285 "Boots, Buckles & Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 285 is "BOOTS, BUCKLES & BUCKS". The play style is "5 games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 285 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 285.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $1.00, $2.00, $4.00, $5.00, $8.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $5,000, 1, 2, 3, 4, 5, 6, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, CHIP SYMBOL, STACK OF COINS SYMBOL, DOLLAR SIGN SYMBOL, NUGGET SYMBOL, CACTUS SYMBOL, HAT SYMBOL, SPUR SYMBOL, FIRELOG SYMBOL, HORSESHOE SYMBOL, and GOLD NUGGET SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: 16 TAC GAME NO. 285 - 1.2D

Figure 1: GAME NO. 285 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
1	ONE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
POT OF GOLD SYMBOL	POTGLD
GOLD BAR SYMBOL	GOLD
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
CHIP SYMBOL	CHIP
STACK OF COINS SYMBOL	STACK
DOLLAR SIGN SYMBOL	MONEY
NUGGET SYMBOL	10 TIMES
CACTUS SYMBOL	TRY AGAIN
HAT SYMBOL	TRY AGAIN
SPUR SYMBOL	TRY AGAIN
FIRELOG SYMBOL	TRY AGAIN
HORSESHOE SYMBOL	FIVE$

Figure 2: 16 TAC GAME NO. 285 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 285 - 1.2E

CODE	PRIZE
$5.00	FIV
$8.00	EGT
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $50,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (285), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 285-0000001-000.

L. Pack - A pack of "BOOTS, BUCKLES & BUCKS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BOOTS, BUCKLES & BUCKS" Instant Game No. 285 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BOOTS, BUCKLES & BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) play symbols. In Game 1, if the player matches 3 across the same row, the player will win the prize shown. In Game 2, if the player's YOUR CARD beats the DEALER'S CARD within a hand, the player will win the prize shown. In Game 3, for each roll, if the total of the player's YOUR ROLL equals 7 or 11, the player will win the prize shown for that roll. In Game 4, within each row, if the player gets three (3) like amounts, the player will win that amount. If the player gets two (2) like amounts and a gold nugget symbol the player will win 10 times that amount. In Game 5, if the player gets a horseshoe symbol, the player will win $5 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 43 (forty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No 3 or more like non-winning symbols on a ticket.

C. Game 1: No duplicate non-winning games on a ticket in any order.

D. Game 2: No ties between Your Card and Dealer's Card in a hand.

E. Game 2: Play symbols will be approximately evenly distributed among their possible locations.

F. Game 2: No duplicate non-winning prize symbols.

G. Game 2: No duplicate Your Card play symbols.

H. Game 2: No duplicate Dealer's Card play symbols.

I. Game 3: Play symbols will be approximately evenly distributed among their possible locations.

J. Game 3: No duplicate non-winning prize symbols.

K. Game 3: No duplicate non-winning rolls in any order.

L. Game 4: Play symbols will be approximately evenly distributed.

M. Game 4: The nugget symbol will only appear once on a ticket and only on intended winners.

N. Game 4: No duplicate non-winning rows.

O. Game 5: The horseshoe symbol will only appear on intended winners.

2.3 Procedure for Claiming Prizes.

A. To claim a "BOOTS, BUCKLES & BUCKS" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $50.00, $100, and $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BOOTS, BUCKLES & BUCKS" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BOOTS, BUCKLES & BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BOOTS, BUCKLES & BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BOOTS, BUCKLES & BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,193,900 tickets in the Instant Game No. 285. The approximate number and value of prizes in the game are as follows:

Figure 3: 16 TAC GAME NO. 285- 4.0

Figure 3: GAME NO. 285 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5.00	1,092,512	7.50
$8.00	764,694	10.72
$10.00	655,512	12.50
$20.00	191,221	42.85
$50.00	36,885	222.15
$100	8,889	921.80
$500	1,779	4,605.90
$1,000	695	11,789.78
$5,000	39	210,100.00
$50,000	3	2,731,300.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 285 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 285, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202221

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 10, 2002

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Instant Game Number 713 "Stash of Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 713 is "STASH OF CASH". The play style in Game 1 is "beat score". The play style in Game 2 is "match 3". The play style in Game 3 is "quick $20".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 713 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 713.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, $20,000, MONEY BAG SYMBOL, CLOVER SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, DOLLAR BILL SYMBOL, COIN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: 16 TAC GAME NO. 713 - 1.2D

Figure 1: GAME NO. 713 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
$20,000	20 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: 16 TAC GAME NO. 713 - 1.2E

Figure 2: GAME NO. 713 - 1.2E

CODE	PRIZE
$2.00	TWO
$4.00	FOR
$5.00	FIV
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, or $300.

I. High-Tier Prize - A prize of $20,000.

J. Bar Code - A 15 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A fifteen (15) digit number consisting of the three (3) digit game number (713), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 713-0000001-000.

L. Pack - A pack of "STASH OF CASH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000-001 will be shown on the front of the pack. The backs of ticket 248 and 249 will show. Every other book will be opposite.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STASH OF CASH" Instant Game No. 713 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STASH OF CASH" Instant Game is determined once the latex on the ticket is scratched off to expose fifteen (15) play symbols. In Game 1, if any of the player's YOUR NUMBERS match either THEIR NUMBER, the player will win the prize shown for that row. In Game 2, if the player matches 3 like prize symbols the player will win that prize. In Game 3, if the player matches 2 out of 3 symbols, the player will win $20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly fifteen (15) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly fifteen (15) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifteen (15) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the fifteen (15) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. Game 1: There will be no ties between Your Number and Their Number on a row.

E. Game 1: No duplicate games on a ticket.

F. Game 1: No duplicate non-winning prize symbols on a ticket.

G. Game 2: There will not be 4 or more like prize symbols.

H. Game 3: There will never be 3 like play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "STASH OF CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "STASH OF CASH" Instant Game prize of $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STASH OF CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STASH OF CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "STASH OF CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,187,500 tickets in the Instant Game No. 713. The approximate number and value of prizes in the game are as follows:

Figure 3: 16 TAC GAME NO. 713- 4.0

Figure 3: GAME NO. 713 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	539,414	9.62
$4.00	425,388	12.19
$5.00	20,750	250.00
$10.00	72,658	71.40
$20.00	46,677	111.14
$40.00	31,104	166.78
$300	1,929	2,689.22
$20,000	18	288,194.44

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 713 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 713, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202222

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 10, 2002

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Texas Natural Resource Conservation Commission

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 **May 27, 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 May 27, 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: Alizain Enterprises, Inc.; DOCKET NUMBER: 2000-1277-PST-E; TNRCC ID NUMBER: 0017711; LOCATION: 4501 Trail Lake Drive, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: motor vehicle fuel dispensing; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform an annual pressure decay test; PENALTY: $1,250; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: The Army and Air Force Exchange Service; DOCKET NUMBER: 2001-0237-AIR-E; TNRCC ID NUMBER: EE-1213-R; LOCATION: Building 199, Fort Bliss, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to supply, sell, or dispense gasoline for use as a motor fuel with the minimum oxygen content of 2.7 percent by weight; and 30 TAC §115.252(2) and THSC, §382.085(b), by failing to ensure a Reid vapor pressure greater than 7.0 pounds per square inch absolute when transferring gasoline; PENALTY: $2,250; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Ave., Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Gbak Properties, Inc.; DOCKET NUMBER: 1999-1389-PST-E; TNRCC ID NUMBER: 38596; LOCATION: 5411 Broadway, Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(3) and THSC, §382.085(b), by failing to perform tests to verify proper operation of the Stage II vapor recovery system; and 30 TAC §334.21 and TWC, §26.358(b), by failing to pay underground storage tank fees; PENALTY: $1,250; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200202351

Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 16, 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 **May 27, 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 TNRCC's orders and permits issued pursuant to 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 proposed AO is available for public inspection at both 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 an AO should be sent to the attorney designated for the AO at 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 May 27, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to TNRCC in **writing**.

(1) COMPANY: Abilene Food Mart, Inc.; DOCKET NUMBER: 2000-1051-PST-E; TNRCC ID NUMBER: 0035043; LOCATION: 784 Grape Street, Abilene, Taylor County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC 334.48(c), by failing to conduct inventory control for all underground storage tanks (UST); 30 TAC §334.49(a) and TWC, §26.3475, by failing to have corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475, by failing to monitor for releases at a frequency of at least once every month; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: $8,550; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Bay City LTD. dba Shop N' Go; DOCKET NUMBER: 2000-0664-PST-E; TNRCC ID NUMBER: 0039740; LOCATION: 638 Dell Dale Boulevard, Channelview, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform an annual pressure decay test on the Stage II Vapor Recovery system; 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain proof of training for each employee by a facility representative; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain a log of the Stage II daily inspections; 30 TAC §334.50(b)(2) and TWC,

§26.3475(a), by failing to provide a proper release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to perform annual performance testing on line leak detectors; and 30 TAC §334.49(e), by failing to maintain corrosion protection records; PENALTY: $6,875; 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.

(3) COMPANY: The City of Annona; DOCKET NUMBER: 2000-1143-MWD-E; TNRCC ID NUMBER: 10863-001; LOCATION: approximately 1,500 feet east and 4,400 feet south of the intersection of U.S. Highway 82 and Farm-to-Market Road 44, Red River County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121, and Texas Pollutant Discharge Effluent System (TPDES) Permit Number 10863-001, Effluent Limitations and Monitoring Requirement 1, by exceeding the permitted limit of 90 milligrams/liters in reported daily average concentration of Total Suspended Solids (TSS); 30 TAC §305.125(1), TWC §26.121, and TPDES Permit Number 10863-001, Effluent Limitations and Monitoring Requirement 1, by falling below the minimum permitted limit of 6.0 for pH value; 30 TAC §305.125(1), TWC §26.121, and TPDES Permit Number 10863-001, Effluent Limitations and Monitoring Requirement 1, by exceeding the permitted limit of 90 mg/l in reported daily average concentration of TSS; 30 TAC §305.15(1), TWC, §26.121, and TPDES Permit Number 10863-001, Effluent Limitations and Monitoring Requirement 1, by exceeding the permitted daily average TSS loading limit of 55 pounds per day; and 30 TAC §305.1(b)(2) and TWC, §26.121, by discharging wastewater into or adjacent to waters in the state of Texas without a permit; PENALTY: $7,500; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: City of Buda; DOCKET NUMBER: 2001-0645-MWD-E; TNRCC ID NUMBER: 11060-001; LOCATION: 1,900 feet north of the northernmost intersection of Loop 4 and the Missouri-Pacific Railroad on the east bank of Onion Creek, Hays County, Texas; TYPE OF FACILITY: wastewater treatment (facility); RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121, TPDES Permit Number 11060-001, Interim Effluent Limitations, Monitoring Requirements Numbers 1 and 4, Operational Requirement Number 1, Permit Conditions Number 2(a), (b), and (d), by failing to meet its permitted effluent limits and to prevent the discharge of sludge and floating solids into the receiving stream; 30 TAC §305.125(1), TPDES Permit Number 11060- 001, Operational Requirements Number 1, Permit Conditions Number 2(a), (b), and (d), by failing to properly operate and maintain the facility; 30 TAC §305.125(1), and TPDES Permit Number 11060-001, Reporting Requirements Number 7(c), Permit Conditions Number 2(a) and (b), by failing to properly notify, by telephone or letter, the TNRCC Regional Office or Enforcement Division of effluent violations that deviated from the permitted effluent limits by more than 40%; 30 TAC §305.125(1), TPDES Permit Number 11060-001, Monitoring and Reporting Requirements Number 1, Permit Conditions Number 2(a) and (b), by failing to timely and accurately submit discharge monitoring reports; 30 TAC §305.125(1), TPDES Permit Number 11060-001, Sludge Provisions Section II F, Permit Conditions Number 2(a) and 2(b), by failing to submit a sludge report for the fiscal year; and 30 TAC §315.1, TWC, §26.176, 40 Code of Federal Regulations (CFR), §403.5(c)(2), and TPDES Permit Number 11060-001, Contributing Industries and Pretreatment Requirements, by failing to establish and enforce pretreatment ordinances that adequately prevent interference with treatment and the pass-through of pollutants; PENALTY: $56,320; 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.

(5) COMPANY: Dewayne E. Anderson dba Anderson Wastewater Systems; DOCKET NUMBER: 1999-0913-OSI-E; TNRCC ID NUMBER: OS2185; LOCATION: 3647 Highway 96 North, Silsbee, Hardin County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §282.61, TWC §7.303, and THSC, §366.0924, by failing to use reasonable care, judgment or application of knowledge in the performance of his duties as an installer of OSSFs in the state; THSC, §366.051(c) and §366.054, 30 TAC §285.5 and §285.58(a)(3) and (11), by failing to obtain the necessary permitting authority's authorization before beginning to install, construct, alter, extend, or repair an OSSF; 30 TAC Chapter 285 and THSC Chapter 366, and Agreed Order Docket Number 96-0549-OSI-E, Provision Number 4, by failing to be in compliance with all requirements; 30 TAC §285.58(a)(1)(A), §285.58(a)(6), and §285.58(a)(1), by failing to level a trench within one inch over each twenty-fiver feet in the excavation; 30 TAC §285.58(a)(1)(J) and §285.58(a)(1), by failing to provide for a minimum of a twelve-inch drop in elevation from the bottom of the outlet to the bottom of the disposal area; THSC Chapter 366, 30 TAC Chapter 285, Agreed Order Docket Number 96-0549-OSI-E, Provision Number 4, by failing to be in compliance with all the requirements; 30 TAC §285.13(a)(2)(B) and §285.107(a)(6), by failing to properly conduct a soil evaluation; 30 TAC §285.13(b) and §285.107(a)(6), by failing to adequately perform a percolation test; and THSC, §366.051(c) and §366.054, and 30 TAC §285.5 and §285.58(a)(3), by failing to submit planning material, verify proof of a permit, notify the permitting authority, and obtaining the necessary authorization before the installation; PENALTY: license revoked; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Emra Investments, Inc. dba Come and Go; DOCKET NUMBER: 2000-0478- PST-E; TNRCC ID NUMBER: 0019599; LOCATION: 7140 Scott, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control at a retail facility; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor piping for releases monthly; 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each pressurized line with an automatic line leak detector; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a)(1), by failing to perform annual performance test on existing line leak detectors; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition; PENALTY: $13,750; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Jim DeGroat dba Rod and Reel Grille; DOCKET NUMBER: 1998-0790- PWS-E; TNRCC ID NUMBER: 1500070; LOCATION: 1/4 mile north of Ranch Road 3014, Tow, Llano County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(a) and (g), and THSC, §341.033(d), by failing to submit water samples for bacteriological analysis to a laboratory approved by the Texas Department of Health, by failing to provide

public notice regarding failure to submit water samples for bacteriological analysis; 30 TAC §290.109(b)(2), by exceeding the maximum contaminant level for total coliform; 30 TAC §290.109(c)(1)(B) and §290.121, by failing to provide a bacteriological monitoring plan; 30 TAC §290.46(n)(2), by failing to have a distribution map; 30 TAC §290.42(i), by failing to use an American National Standards Institute approved disinfectant; 30 TAC §290.41(c)(1)(F), by failing to have a sanitary easement for the water well; and 30 TAC §290.51(a)(3) and THSC, §341.041, by failing to pay public health service fees; PENALTY: $3,969; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Dr., Suite. 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: K & K Tank Cleaning Systems, Incorporated; DOCKET NUMBER: 2000- 0566-AIR-E; TNRCC ID NUMBER: TA-3090-R; LOCATION: 2450 Cold Springs Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: tank cleaning; RULES VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), and TNRCC Air Permit Number 31434, Special Condition Numbers 12 and 13, by failing to operate a carbon absorption system and a flare during tank cleaning operations; and 30 TAC §116.115(c), THSC, §382.085(b), and TNRCC Air Permit Number 31434, Special Condition Number 20C, by failing to maintain records of calculated emissions for each chemical on a rolling twelve-month basis; PENALTY: $600; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76010-6499, (817) 588-5800.

(9) COMPANY: Leedo Manufacturing Company; DOCKET NUMBER: 2000-0389-AIR-E; TNRCC ID NUMBER: WF-0046-E; LOCATION: 100 Foundation Loop, East Bernard, Wharton County, Texas; TYPE OF FACILITY: cabinet manufacturing plant; RULES VIOLATED: 30 TAC §101.20(2) and §113.410, CFR Subpart JJ, §63.803(a) and (b), and THSC, §382.085(b), by failing to develop a Work Practice Implementation Plan (WPIP) within sixty days after the compliance date of November 21, 1997; by failing to implement the WPIP after development, and by failing to implement an Operator Training Course; 30 TAC §116.110(a)(1), THSC, §382.0518(a) and §382.085(b), by failing to renew TNRCC Permit Number 8824A; 30 TAC §122.121 and §122.130(b)(1), and THSC, §382.054 and §382.085(b), by failing to submit an abbreviated Title V application by February 1, 1998 and continuing to operate; and 30 TAC §101.20(2) and §113.410, CFR Subpart JJ, §§63.804(f)(2),(7), and (8), and THSC, §382.085(b), by failing to submit an initial compliance status report stating that compliant stains, wash coats, sealers, top coats, base coats, enamels, thinners, and strippable spray booth coatings, as applicable, are being used, by failing to submit an initial compliance report stating that the WPIP has been developed; PENALTY: $21,282; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: New Forest Water Sinking Fund, C.E. Stiebing, Gerald Kalanta, Kenneth and Rosalie Smith, Larry A. Long, Amanda Gail Daigle, Patricia Matte, John Miller, Todd A. Simoneaux, Johnnie Faye Moore, James and Sherrie Compton, Ruth Thomas, Donna and Jay Thomas, Richard and Cynthia Parish, David and Angela Mehl, Nickey and Jana Garsee, Paul Enderle, James Janow, and Jim Shifflett; DOCKET NUMBER: 1999-0592-PWS-E; TNRCC ID NUMBER: 1000062; LOCATION: U. S. Highway 69 North, approximately six miles north of Lumberton, Hardin County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(e), by failing to operate under the direct supervision of a certified water works operator; 30 TAC §290.46(p)(2), by failing to conduct an annual inspection of the system's pressure tank by a water system personnel; 30 TAC §290.46(f)(1), by failing to provide a mechanical disinfection facility capable of maintaining an acceptable disinfectant residual; 30 TAC §290.46(f)(2)(B), by failing to test the disinfectant residual at representative locations in the distribution system using a test kit which employs a diethy-p-phenylenediamine indicator at least once every seven days; 30 TAC §290.45(b)(1)(A)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.41(c)(1)(F), by failing to secure and record in the deed records at the county courthouse a sanitary control easement covering that portion of the land within 150 feet of the well location; 30 TAC §290.106(b)(5) and (e)(2), and, by failing to take additional routine bacteriological samples and proper repeat samples, by failing to report the monitoring violation to the commission within ten days of the violation, and by failing to notify the public; and 30 TAC §§290.103(8), and 290.105, 290.106(e)(1), by exceeding the maximum contaminant levels for total coliform, by failing to report the violation to the commission by the end of the next business day after it learned of the violation, and by failing to notify the public; PENALTY: $1,000; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Quadvest, Inc.; DOCKET NUMBER: 1999-0905-PWS-E; TNRCC ID NUMBERS: 1011805, 1011806, 1011810, 1700576, 1700577, 1700609, 1700611, 1700624, 1700404, 2370042; LOCATION: Harris, Montgomery, and Waller Counties, Texas; TYPE OF FACILITY: ten public drinking water systems; RULES VIOLATED: 30 TAC §290.39(j) and §290.41(c)(3)(A), by failing to submit well completion data and by failing to notify the executive director prior to making significant changes or additions to the system's production, treatment, storage, or distribution facilities; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary easement for the well site; 30 TAC §290.41(c)(3)(K), by failing to provide a casing vent on the well; 30 TAC §290.41(c)(3)(M), by failing to provide a sampling tap on the well discharge; 30 TAC §290.41(c)(3)(N), by failing to provide a flow meter on the well; 30 TAC §290.41(c)(3)(O), by failing to provide a properly constructed intruder resistant fence; 30 TAC §290.42(e)(6), by failing to provide high level and floor level screened vents in the chlorinator room; 30 TAC §290.42(e)(7), by failing to properly house the hypochlorination solution containers; 30 TAC §290.43(c)(2), by failing to provide a properly designed roof hatch on the ground storage tank; 30 TAC §290.43(d)(3), by failing to provide pressure tanks with facilities for maintaining the air- water volume at a design water level and working pressure; 30 TAC §290.44(h), by failing to have a check valve or back flow prevention device on the well; 30 TAC §290.45(b)(1)(A) and §291.93, and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.46(f), by failing to compile monthly operations reports and have them available for review by the inspector; 30 TAC §290.46(d)(2)(A), by failing to maintain free chlorine residual of 0.2 milligrams/liters; 30 TAC §290.41(c)(3)(O), by failing to provide a properly constructed intruder resistance fence; 30 TAC §290.41(c)(3)(K), by failing to initiate a maintenance program; 30 TAC §290.46(m)(4), by failing to keep distribution lines and equipment in a watertight condition; 30 TAC §290.46(t), by failing to post legible signs at each of the system's production, treatment and storage facilities; 30 TAC §290.46(v), by failing to install electrical wiring in conduit; 30 TAC §290.109(c)(2), by failing to submit water samples for bacteriological analysis; 30 TAC §290.118 and THSC, §341.031(a) and §341.0315(c), by failing to provide water which meets the secondary constituents levels for Iron and pH; and 30 TAC §290.117(c), by failing to collect and submit water samples for lead/copper analysis; PENALTY: $25,848; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512)

239-5915; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(12) COMPANY: VV Water Supply System, Inc.; DOCKET NUMBER: 2001-0921-PWS-E; TNRCC ID NUMBER: 0610052; LOCATION: north side of Farm-to-Market Road 426, three miles east of Loop 288, Denton, Denton County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to complete customer service inspections prior to providing continuous water service to new construction; 30 TAC §290.46(u), by failing to plug or repair abandoned Well Number 2; 30 TAC §290.41(c)(1)(F) and TNRCC AO, Docket Number 2000-0061-PWS-E, Ordering Provision 2.e., by failing to secure sanitary control easements; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.43(c)(4), by failing to equip the 37,000 gallon storage tank with a water level indicator; 30 TAC §290.42(e)(7), by failing to ensure that the lid of the hypochlorination solution container was completely covered and sealed to prevent the entrance of dust, insects and other contaminants; 30 TAC §290.45(b)(1)(D)(v), and TNRCC AO, Docket Number 2000-0061-PWS- E, Ordering Provision 2.d., by failing to provide emergency power delivering water at a rate of 0.35 gallons per minute per connection to the distribution system in the event of the loss of normal power supply; 30 TAC §290.45(b)(1)(D)(i) and TNRCC AO, Docket Number 2000-0061-PWS-E, Ordering Provision 2.g., by failing to provide a total well capacity of 0.6 gallons per minute per connection; 30 TAC §290.41(c)(3)(B) and TNRCC AO, Docket Number 2000-0061-PWS-E, Ordering Provision 2.h., by failing to provide each well with a casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface with a minimum one inch above the sealing block or pump motor foundation block; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge line; and 30 TAC §290.41(c)(3)(N), by failing to install a flow meter on the discharge line; and 30 TAC §290.46(m), by failing to initiate a maintenance program to ensure the reliability and general appearance of all regulated facilities and reduce costly repairs due to lack of proper maintenance; PENALTY: $11,688; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

TRD-200202350

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 16, 2002

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Notice of Public Hearing (Chapter 101)

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning amendments to 30 TAC Chapter 101, concerning General Air Quality Rules; and a corresponding revision to the SIP under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning SIPs. The amendments to Chapter 101 are proposed to be submitted as a revision to the SIP.

The commission proposes an amendment to §101.1 and the repeal of §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17. The commission also proposes new §101.201 in new Division 1, *Emissions Events*; new §101.211 in new Division 2, *Maintenance, Startup, and Shutdown Activities*; new §§101.221 - 101.224 in new Division 3, *Operational Requirements, Demonstrations, and Excessive Emissions Events*; and new §§101.231 - 101.233 in new Division 4, *Variances*. The amendment and repeals are being proposed in Subchapter A, *General Rules*, and the new sections are being proposed in new Subchapter F, *Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities*.

The proposed amendments to Chapter 101 implement House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001, by incorporating the requirements of HB 2912 into the rule language in Chapter 101. These requirements include changing the term "upset" with the term "emissions event"; adding additional and more detailed information to the notification and reporting requirements for emissions events; requiring reporting in an electronic format; and requiring specific actions be taken when the commission determines the emissions events to be excessive or chronic. The proposed amendments to Chapter 101 also partially reformat Chapter 101 by creating new Subchapter F, and placing topically specific rules regarding upset, maintenance, startup, and shutdown; temporary exemptions; variances; and transfers into new Subchapter F.

A public hearing on this proposal will be held in Austin, Texas, on May 21, 2002, at 10:00 a.m., at the 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. There will be no open discussion during the hearing; however, a commission 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 Ms. Lola Brown, 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 2001-075-101-AI. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Troy Dalton of the Enforcement Division at (512) 239-1541 or Alan Henderson of the Policy and Regulations Division at (512) 239-1510. Copies of the proposed rulemaking may be obtained from the commission's website at: www.tnrcc.state.tx.us/oprd/rules/propadop.html.

TRD-200202265

Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 12, 2002

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Notice of Public Hearing (Chapters 1, 39, and 116)

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning revisions to 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 39, Public Notice; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed new and amended sections would implement provisions of House Bill (HB) 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), §1.12 and §2.01; HB 2947 (an act relating to the posting of notice for water discharge permits); and Senate Bill 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact); enacted by the 77th Legislature, 2001. The proposal includes certain requirements relating to the content of public notices, public meetings for facilities that accept municipal solid waste, newspaper publications, and public notices and other procedures for multiple plant permits.

A public hearing on this proposal will be held in Austin on May 21, 2002 at 2:00 p.m. at the Texas Natural Resource Conservation Commission 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 Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001- 028-039-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

TRD-200202270
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 12, 2002

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Notice of Public Hearing (Chapters 5 and 20)

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 comments concerning revisions to 30 TAC Chapter 5, specifically amendments to §§5.1 - 5.5, 5.7, 5.10, and 5.14 and new §5.20 and §5.21; and Chapter 20, specifically an amendment to §20.19.

These proposed revisions to Chapter 5 and Chapter 20 implement House Bill (HB) 2912, 77th Legislature, 2001, §1.10, which amended Texas Water Code, Subchapter D, Chapter 5, §5.107, relating to Advisory Councils; and HB 2914, 77th Legislature, 2001, Sections 45 - 52, which amended Texas Government Code, Chapter 2110, relating to State Agency Advisory Committees. Chapter 5 would change the title of the chapter from "Advisory Committees" to "Advisory Committees and Groups" to cover advisory committees, work groups, task forces, stakeholder groups, and groups of other designations frequently used by the agency and would require the agency to make reasonable attempts to have balanced representation. The proposed revisions would require the commission to monitor the composition and activities of advisory committees and maintain minutes of advisory committee meetings in a form and location that is easily accessible to the public, including making the information available on the commission's website. In addition, Chapter 5 would specify that an advisory committee created by the commission shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), which provides that unless the state agency, by rule, designates a different date on which the committee will be automatically abolished, the committee is automatically abolished on the later of September 1, 2005, or the fourth anniversary of the date of its creation. Revisions to Chapter 20 would change the title of §20.19 from "Working Groups" to "Working Committees and Groups" and would add a sentence to require that selection and appointment of any working groups or persons to advise the commission on rulemaking adhere to the process established under Chapter 5.

A public hearing on this proposal will be held in Austin on May 20, 2002 at 2:00 p.m. at the commission's central office, 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.

Written comments may be submitted to Lola Brown, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-068-005-AD. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Debra Barber, Policy and Regulations Division, (512) 239-0412.

TRD-200202275
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 12, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 21, 220, and 305

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 revisions to 30 TAC Chapter 21, Water Quality Fee; Chapter 220, Regional Assessments of Water Quality; and Chapter 305, Consolidated Permits.

The commission proposes the following in 30 TAC: repeal of Chapter 220, Subchapter A, Program for Monitoring and Assessment of Water Quality by Watershed and River Basin, §§220.1 - 220.7, and Subchapter B, Program for Water Quality Assessment Fees, §220.21 and §220.22; repeal of Chapter 305, Subchapter M, Waste Treatment Inspection Fee Program, §§305.501 - 305.507; new Chapter 21,§§21.1 - 21.4; and the concurrent proposal of new §§220.1 - 220.8 in Chapter 220.

The proposed rules will establish a new methodology for assessing fees as directed by House Bill HB 2912, §§3.04 - 3.06, 77th Legislature, 2001, which replaced the existing water quality assessment fee and the waste treatment fee with a new fee.

A public hearing on this proposal will be held in Austin on May 21, 2002 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 2001-098-220-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Debi Dyer, Policy and Regulations Division, (512) 239-3972.

TRD-200202305

Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 12, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 90

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 amended sections of 30 TAC Chapter 90, Regulatory Flexibility.

The proposed amendments to §90.1, Purpose and §90.10, Application for a Regulatory Flexibility Order implement changes to Texas Water Code (TWC), §5.123, concerning Regulatory Flexibility, enacted by House Bill 2912, §4.02, 77th Legislature, 2001. The legislation redesignated the section as TWC, §5.758, concerning Regulatory Flexibility, and requires that applications for regulatory flexibility orders clearly demonstrate that the requested variances are more protective than the current requirements of rule or law.

A public hearing on this proposal will be held in Austin on May 20, 2002 at 10:00 a.m., in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments 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 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. Comments must be received by 5:00 p.m., May 28, 2002, and should reference Rule Log Number 2001-073-090-AD. 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 Joe Thomas, Policy and Regulations Division at (512) 239-4580.

TRD-200202306

Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 12, 2002

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 312

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 revisions to 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation.

The commission proposes to repeal §§312.4, 312.10 - 312.12 and amend §312.13. The commission proposes to concurrently replace the repealed sections with new §§312.4 and 312.10 - 312.12. This proposed rulemaking to Chapter 312 implements Section 9.05 of HB 2912, which requires that Class B sewage sludge only be land applied at permitted (as opposed to registered) facilities after September 1, 2003. Based on the legislation, a fee schedule for applications and certain requirements for the permits are proposed. Not related to legislative implementation, the rulemaking also proposes: to allow the executive director to deny notice of intent for marketing and distributing, storing, or land applying Class A sewage sludge; handling of fees for permitted facilities; and more stringent soil sampling criteria for sites to be registered or permitted.

A public hearing on this proposal will be held in Austin on May 28, 2002 at 10:00 a.m., Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

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 2001-083-312-WT. Comments must be received by 5:00 p.m., May 28, 2002. For further information or questions concerning this proposal, please contact Joe Thomas, Policy and Regulations Division, at (512) 239-4580.

TRD-200202307

Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 12, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of March 26, 2002 through April 15, 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.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 11375-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 637,000 gallons per day. The draft permit reduces the final phase permitted flow from 637,000 gallons per day to 184,000 gallons per day. The facility is located approximately 2.5 miles east of the intersection of Farm-to-Market Road 529 (Spencer Road) and U.S. Highway 290 between Windfern Road and Fairbanks-North Houston Road in Harris County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 12454-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on the east side of the Kickapoo Creek Arm of Lake Livingston, approximately 2000 feet south of United States Highway 190 within the Cedar Point subdivision in Polk County, Texas.

BASTROP INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to Permit No. 14200-001, to authorize an increase in the daily average flow from 8,000 gallons per day to 30,000 gallons per day and to increase the acreage used for subsurface drip irrigation from 1.84 acres to 6.89 acres of nonpublic access land seeded with bermuda and rye grasses. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via subsurface drip irrigation on 1.84 acres of nonpublic access land seeded with bermuda and rye grasses. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located in the community of Cedar Creek, approximately 1.5 miles northeast of the intersection of State Highway 21 and Farm-to-Market Road 535 in Bastrop County, Texas.

BOC GASES which operates an industrial cryogenic gas separation plant producing oxygen, nitrogen, and argon from air, has applied for a new permit, proposed TPDES Permit No. 04358, to authorize the discharge of non-contact cooling tower blowdown at a daily average flow not to exceed 30,000 gallons per day via Outfall 001. The facility is located adjacent to the southwest side of Texas FM Road 39, approximately 3/4 miles northwest of the intersection of United States Highway 79 and Texas FM Road 39, southwest of the City of Jewett, Leon County, Texas.

CITY OF FAIRFIELD has applied for a renewal of TNRCC Permit No. 10168-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 4,000 feet east of U.S. Highway 75 and approximately 6,000 feet south of U.S. Highway 84 in Freestone County, Texas.

GREEN TRAILS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 12289-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located on the north bank of Mason Creek, approximately 2 miles south of Interstate Highway 10, between Baker Road and Fry Road in Harris County, Texas. The treated effluent is discharged to Harris County Flood Control Ditch T101-01-00; thence to Mason Creek; thence to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin.

JIM HOGG COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. 10799-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 796,000 gallons per day. The facility is located approximately 3,700 feet east of the intersection of State Highway 285 and Farm-to-Market Road 1017, on the north side of State Highway 285 in Jim Hogg County, Texas.

KLEBERG COUNTY has applied for a renewal of TPDES Permit No. 13374-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 33,000 gallons per day. The facility is located 1.5 miles southeast of Loyola Beach and 1750 feet southeast of the intersection of Farm to Market Road 628 and County Road 1150 in Kleberg County, Texas.

CITY OF MABANK has applied for a renewal of TPDES Permit No. 10579-003, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1 3/4 miles west of the intersection of Farm-to-Market Road 85 and Farm-to-Market Road 90, and approximately 3 1/2 miles southwest of the City of Mabank in Henderson County, Texas.

MATAGORDA COUNTY NAVIGATIONAL DISTRICT NO. 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04036, to authorize the discharge of treated bilge water at a daily average flow not to exceed 500 gallons per day via Outfall 001. The applicant proposes to operate a bilge water reclamation facility. The plant site is located within the Port of Palacios, on the south shore of Turning Basin #3, approximately two miles east of the intersection of Newsom Road and Mangerum Blvd., in the City of Palacios, Matagorda County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TNRCC Permit No. 10257-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,750,000 gallons per day. The facility is located approximately 2, 310 feet southeast of the intersection of Spring Valley Road and State Highway 75 in the City of Richardson in Dallas County, Texas.

CITY OF OVERTON has applied for a renewal of TPDES Permit No. 10242-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 2,900 feet east of the intersection of Henderson Street and Linda Lane in Rusk County, Texas.

OWENS CORNING has applied for a renewal of TNRCC Permit No. 01178, which authorizes the discharge of storm water runoff commingled with cooling tower and boiler blowdown on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0065749 issued on June 19, 1987 and TNRCC Permit No. 01178, issued on October 11, 1996. The applicant operates a fiberglass wool insulation products manufacturing plant. The plant site is located adjacent to the east side of Interstate Highway 35E, approximately one (1) mile north of the intersection of Interstate Highway 35E and U.S. Highway 287, north of the City of Waxahachie, Ellis County, Texas.

SOLVAY POLYMERS, INC. which operates the LaPorte Plant, a polyolefin and inorganic chemicals manufacturing facility, has applied for a renewal of TNRCC Permit No. 00544, which authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, storm water runoff, and treated Interox wastewater including sodium perborate (PBS) wastewater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001; the discharge of utility wastewater and storm water runoff on an intermittent and flow variable basis via Outfall 002; the discharge of treated process wastewater, utility wastewater, domestic wastewater and storm water runoff at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 003; the discharge of utility wastewater and storm water runoff on an intermittent and flow variable basis via Outfall 004; and the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 005. The facility is located at 1230 Battleground Road (State Highway 134), south of Miller Cutoff Road in the City of Deer Park, Harris County, Texas.

TEXAS A&M UNIVERSITY SYSTEM, TEXAS AGRICULTURAL EXPERIMENT STATION, SHRIMP MARICULTURE RESEARCH which proposes to operate a marine shrimp culture research facility has applied for a new permit, proposed TPDES permit no. 04165, to authorize the discharge of process wastewater at a daily average flow not to exceed 10,000 gallons per day via Outfall 001, and process wastewater at a daily average not to exceed 10,000 gallons per day via Outfall 002. The facility is located on the south side of the Corpus Christi Ship Channel, approximately 1,385 feet west of the ferry landing, and approximately 250 feet east of the municipal pier, on Port Street, in the City of Port Aransas, Nueces County, Texas.

TEXAS PARKS & WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11830- 001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via subsurface drainfields with a minimum area of 39,000 square feet. The facility and disposal site are located in the Huntsville State Park in the general location between the service area and the Prairie Branch camping area, approximately 6 miles south of the City of Huntsville in Walker County, Texas. The absorption field is located approximately 600 feet from the shoreline of Lake.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. 13795-001, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 900,000 gallons per day. The facility is located on Wallace Road, approximately 1.8 miles north of Farm-to-Market Road 2628 in Walker County, Texas.

TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. 11593-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,400,000 gallons per day to an annual average flow not to exceed 1,750,000 gallons per day with provisions to use a portion of the treated effluent to irrigate 416.91 acres of golf course land. The facility is located approximately 0.9 mile north of the intersection of State Highway 114 and Trophy Club Drive, approximately 2.5 miles east of the intersection of U.S. Highway 377 and State Highway 114 in Denton County, Texas.

CITY OF VERNON has applied for a renewal of TPDES Permit No. 10377-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 0.8 mile northeast of the intersection of U.S. Highway 283 and the Fort Worth and Denver Railroad in the City of Vernon in Wilbarger County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

BASTROP COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 3 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the addition of the alum drip feed system and the changing of the daily average flow of effluent from 0.085 million gallons per day (MGD) to 0.055 MGD. The facility is located approximately 400 feet north of Pearce Lane, 6 miles north of the intersection of Pearce Land and State Highway 21 and 18 miles west of the City of Bastrop in Bastrop County, Texas.

TRD-200202355
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 16, 2002

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Notice of Water Rights Application

Notices mailed during the period April 3, 2002 through April 16, 2002

APPLICATION NO. 5746 Applicants seek authorization to maintain 3 existing reservoirs on an unnamed tributary of Kickapoo Creek, tributary of the Neches River, Neches River Basin, for storage of groundwater and subsequent irrigation of 600 acres out of a 622.281 acre tract located in the T.J. Church Survey, Abstract 140, and the Ferris Montgomery Survey, Abstract 514, Van Zandt County. Ownership of the land is evidenced by Warranty Deeds vol 1363, pg 976; vol 1569, pg 76; vol 1440, pg 16; vol 1188, pg 190; vol 1335, pg 194; vol 134, pg 247; vol 1293, pg 943; vol 1440, pg 657; vol 1340, pg 257; vol 1518, pg 243; and vol 1421, pg 940 as in the records of the Van Zandt County Clerk's office. The groundwater will be discharged directly into the reservoirs at the following points and rates: Reservoir 1- Latitude 32.4541 degrees N, Longitude 95.8389 degrees W at 0.668 cfs (300 gpm), Reservoir 2- Latitude 32.4565 degrees N, Longitude 95.8467 degrees W at 0.557 cfs (250 gpm), and Reservoir 3- Latitude 32.4598degrees N, Longitude 95.8545 degrees W at 0.223 cfs (100 gpm). The reservoirs are all located approximately 7 miles southeast from Canton, Texas, and are described as follows: Reservoir 1 has a capacity of 172.7 acre-feet of water and a surface area of 27.5 acres. Station 3+00 on the centerline of the dam is N 33 degrees E, 2600 feet from the South corner of the aforesaid Church Survey, also being Latitude 32.455 degrees N, Longitude 95.838 degrees W. Reservoir 2 has a capacity of 217.1 acre-feet of water and a surface area of 24 acres. Station 4+00 on the centerline of the dam is N 13 degrees W, 2900 feet from the South corner of the aforesaid Church Survey, also being Latitude 32.456 degrees N, Longitude 95.846 degrees W. Reservoir 3 has a capacity of 41.4 acre-feet of water and a surface area of 9.20 acres. Station 2+00 on the centerline of the dam is N 37 degrees W, 4600 feet from the South corner of the aforesaid Church Survey, also being Latitude 32.456 degrees N, Longitude 95.852 degrees W. The applicant will divert and use 415 acre-feet of groundwater per annum for agricultural use from the perimeter of each reservoir at a maximum diversion rate as follows: 0.557 cfs (250 gpm) from Reservoir 1, 0.334 cfs (150 gpm) from Reservoir 2, and 0.223 cfs (100 gpm) from Reservoir 3. All three reservoirs will be maintained full with groundwater. The application was received on July 6, 2001. The Executive Director reviewed the application and determined it to be administratively complete on January 2, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will

be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NO 5769 Kip Estep, P. O. Box 2, Rockwall, Texas, 75087, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to 30 TAC 295.152 and 295.153 (a) and (b), notice will be published in a newspaper and mailed to all water right holders of record in the Trinity River Basin. Applicant seeks authorization to maintain an existing dam and reservoir (referred to as Gator Lake) on Alder Creek, tributary of Catfish Creek, Tributary of the Trinity River, Trinity River Basin, Henderson County to impound therein not to exceed 601 acre-feet of water per annum for recreation and livestock use. The dam will be located approximately 11.5 miles southeast of Athens, Texas, in the J. B. Folmar Original Survey, Abstract No. A-945 in Henderson County. Station 4 + 00 on the centerline of proposed dam is located N 45 degrees E (bearing), 1,205 feet from the southwest corner of the aforesaid Survey at Latitude 32.093 degrees N, Longitude 95.704 degrees. The applicant intends to use an existing 500 to 600 gpm groundwater well to fill and help maintain the reservoir. Ownership of the land where the dam and reservoir will be located is evidenced in a Warranty Deed recorded in Volume 1539, Page 340 of the Deed Records of Henderson County. The application was received on November 6, 2001 The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on March 25, 2002. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days of the date of newspaper publication of the notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

PROPOSED PERMIT NO. 8223 APPLICATION. Houston Fuel Oil Terminal Company, 16642 Jacintoport Boulevard, Houston, Texas, 77015, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Temporary Water Use Permit pursuant to Texas Water Code 11.138, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Notice should be mailed pursuant to 30 TAC 295.153 (a) and (b) to the water right holders in the vicinity, in the judgement of the commission, who might be affected. The applicant seeks to divert 100 acre-feet of water within a period of three years at a rate of 5.57 cfs (2,500 gpm) at a diversion point located at or near the water crossing in the vicinity of Interstate 10, located 15.5 miles east of the city of Houston, Texas, Harris County. The water will be obtained from Buffalo Bayou, tributary of San Jacinto River, San Jacinto River Basin, Harris County, and will be used for hydrostatic testing on several newly constructed tanks. The application was received on February 7, 2002. The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on March 18, 2002. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by May 2, 2002. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by May 2, 2002. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

APPLICATION NO. 08-2461A City of Dallas, 1500 Marilla, Room 4A North, Dallas, Texas 75201, applicant seeks to amend Certificate of Adjudication No. 08-2461, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Notice should be mailed pursuant to 30 TAC 295.160 to the water right holders in the Trinity River Basin between the White Rock Lake and the downstream diversion point. Certificate of Adjudication No. 08-2461 authorizes the City of Dallas to maintain an existing dam and reservoir known as White Rock Lake on White Rock Creek, a tributary of Trinity River, in the Trinity River Basin and impound not to exceed 21,345 acre-feet of water. The City is also authorized to divert and use not to exceed 5,696.8 acre-feet of water per annum for municipal purposes, 6.35 acre-feet of water per annum for recreational purposes, and 3,000 acre-feet of water per annum for agricultural purposes from the aforesaid reservoir at a combined maximum diversion rate of 36.99 cfs (16,000 gpm). The time priority of the owner's right is April 22, 1914 for municipal and recreational use and August 16, 1982 for agricultural use in Dallas County. Applicant seeks to amend Certificate of Adjudication No. 08-2461 to authorize the use of the bed and banks of White Rock Creek to convey agricultural water from White Rock Lake downstream approximately 2 river miles to a diversion point on a reservoir authorized by Water Use Permit No. 5448 to supply water to the City's Tenison Park Golf Club, in Dallas County. The City of Dallas will discharge 350 acre-feet of water per annum from the White Rock Lake dam at a maximum rate of 20 cfs (8,976 gpm) into White Rock Creek. The discharge point is located 5 miles in a northeast direction from the courthouse in Dallas County, Texas, also being at 32.82 degrees N Latitude and 96.72 degrees W Longitude. To account for carriage loss, a maximum of 332 acre-feet of water per annum will be diverted at a proposed downstream diversion point on the reservoir in Dallas County at a maximum rate of 20 cfs (8,976 gpm). The proposed diversion point will be located at 32.80 degrees N Latitude, 96.73 degrees W Longitude, also being approximately 5 miles in a northeast direction from the courthouse in Dallas County, Texas. The applicant has estimated a 2 percent carriage loss in the 2 river miles between the discharge point and the diversion point. The application was received on April 27, 2000. Additional information was received December 28, 2000, January 22, 2002, February 8, 2002, February 20, 2002, and March 25, 2002. The application was determined to be administratively complete on March 25, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 3, 2002. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by May 3, 2002. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by May 3, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200202356
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 16, 2002

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North Central Texas Council of Governments

Request for Proposals Rail Coordination Consultant

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is seeking written proposals from highly qualified firms or individuals with extensive technical, engineering, and/or legal experience and knowledge of railroads from both the private and public perspectives. The selected individual will serve as an extension of NCTCOG staff and assist in the planning and implementation of passenger and freight rail recommendations contained in Mobility 2025 Update: The Metropolitan Transportation Plan, which is comprehensive and integrated in that it recommends a variety of transportation systems to serve the growing demand for travel in the region. Essential job functions and required knowledge, skills, and abilities for the selected individual include, but are not limited to: assisting in the planning and implementation of regional rail recommendations; serving as a resource to and a liaison between NCTCOG and the community, government entities, vendors, consultants, contractors, and others both inside and outside the rail industry; identifying right-of-way purchases/acquisitions or track improvements that may be necessary for route extensions; and drafting, negotiating, and executing necessary agreements and contracts required to facilitate implementation. A knowledge of Federal Railroad Administration rules and regulations; value assessment practices for the purpose of right-of-way acquisition; railroad operations, general business issues, real estate transactions and practices; analytical and creative ability to find solutions to complex legal, technical, financial, interpersonal, and professional problems; a demonstrated ability in working effectively with Federal, State, and local officials with regard to transportation activities; and knowledge of the Dallas-Fort Worth region.

Due Date

Proposals must be submitted no later than 5 p.m. Central Time on Friday, May 10, 2002, to Barbara Maley, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Barbara Maley, (817) 695-9278.

Contract Award Procedures

The firm or individual selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200202360
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 17, 2002

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Texas Commission on Private Security

Correction of Error

The Texas Commission on Private Security withdrew proposed amendments to 22 TAC §422.1. The notice of withdrawal was published in the March 8, 2002, *Texas Register* (27 TexReg 1691).

Due to a typographical error, the *Texas Register* printed the date of filing for the notice as February 28, 2001. The correct date is February 28, 2002.

TRD-200202303
Karen Williams-Jones
Texas Commission on Private Security
Filed: April 12, 2002

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Texas Department of Protective and Regulatory Services

Request for Proposal - Dan Kubiak Buffalo Soldiers Heritage Program

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for the provision of the Dan Kubiak Buffalo Soldiers Heritage

Program. PRS anticipates funding five contracts as a result of this solicitation. The Request for Proposal (RFP) will be released on or about April 26, 2002, and will be posted on the State Internet Site at http://esbd.tbpc.state.tx.us on the date of its release.

Brief Description of Services: PRS is soliciting providers for direct delivery of services for the Dan Kubiak Buffalo Soldiers Heritage Program. This specialized program is designed to develop honor, pride, and dignity in at-risk youth. Buffalo Soldiers were chosen because of their rich and significant contributions to our nation and to the history of Texas. Buffalo Soldiers are a model of courage and leadership from the perspective of African-American soldiers. The history highlights the struggle of ordinary men who wielded extraordinary strength and courage to overcome seemingly insurmountable odds.

Eligible Offerors: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Businesses and Women's Enterprises, and Small Businesses are encouraged to apply.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due June 25, 2002, at 2:00 p.m. Contracts are anticipated to be funded at $50,000 each. The effective dates of contracts awarded under this RFP will be September 1, 2002, through August 31, 2003.

Limitations: The funding allocated for the contracts resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS reserves the right to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Contact Person: Potential offerors may obtain a copy of the RFP on or about April 26, 2002. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez for Vicki Logan; Mail Code E-541; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031.

TRD-200202366
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: April 17, 2002

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Request for Proposal - Tertiary and Secondary Child Abuse Prevention Programs

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting contractors to provide Tertiary and Secondary Child Abuse Prevention services. PRS anticipates funding four contracts in different areas of the state as a result of this solicitation. The Request for Proposal (RFP) will be released on or about April 19, 2002, and will be posted on the State Internet Site at http://esbd.tbpc.state.tx.us on the date of its release.

Brief Description of Services: PRS is soliciting four contractors to provide tertiary and secondary child abuse prevention services through community-based, volunteer- driven programs. Services will be provided to families with children 0-17 years (with a focus on children 0-12 years) that have received, but are no longer receiving, services through PRS Child Protective Services (CPS), or where the children have been determined by CPS to be at risk of abuse or neglect with risk factors controlled. Families in which child abuse has actually occurred will receive priority for services.

Services required through this solicitation include the following: assessment of needs of community's abused and at-risk children and their families; implementation of community- based programs to promote continued risk reduction of child maltreatment; community collaboration in service provision; area-wide and statewide networking; provision of qualified staff and volunteers; record keeping and reports submission; and annual evaluation.

Eligible Offerors: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to apply.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. PRS reserves the right to fund no proposals, or to fund successful proposals at a lesser dollar amount than the amounts indicated below. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS reserves the right to procure by non-competitive means in accordance with the law but without further notice to potential offerors.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due June 11, 2002, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be September 1, 2002, through August 31, 2003. Proposals submitted must request funding of at least $85,000, but no more than $100,000. A total of $400,000 is available to fund the services. Offers will not be accepted if requested PRS funding is less than $85,000 for the period, or more than $100,000.

Contact Person: Potential offerors may obtain a copy of the RFP on or about April 19, 2002. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez for Vicki Logan; Mail Code E-541; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031.

TRD-200202365
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: April 17, 2002

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 8, 2002, Phone City Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60414. Applicant intends to remove the resale-only restriction.

The Application: Application of Phone City Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 25706.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than May 1, 2002. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25706.

TRD-200202219
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 9, 2002, McWireless, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60500. Applicant intends to change its name to Phone Mart, Inc.

The Application: Application of McWireless, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 25715.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than May 1, 2002. You may contact the PUC Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25715.

TRD-200202346
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 10, 2002, Intetech, L.C. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60141. Applicant intends to reflect a change in ownership/control and a name change to Campus Communications Group, Inc.

The Application: Application of Intetech, L.C. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 25719.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than May 1, 2002. You may contact the PUC Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25719.

TRD-200202347
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 15, 2002, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of BullsEye Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 25748 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance service.

Applicant's requested SPCOA geographic area includes those areas of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 1, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200202348
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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Notice of Petition for Rulemaking Regarding Release of Subscriber List Information to 9-1-1 Administrative Entities

The Public Utility Commission of Texas (commission) received a petition for rulemaking on April 10, 2002, from Southwestern Bell Telephone Company (SWBT) to adopt a new rule that would establish procedures concerning the release of subscriber list information to 9-1-1 administrative entities in non-emergency situations. The petition is assigned Project Number 25717, *Petition of Southwestern Bell Telephone Company for Rulemaking Regarding Release of Subscriber List Information to 9-1-1 Administrative Entities.* Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Tarrant County 9-1-1 District (TC 9-1-1) seeks access to (1) the automatic location information (ALI) and/or automatic number information (ANI), including published telephone numbers, for subscribers of competitive local exchange carriers (CLECs), and (2), ALI, including non-published numbers, for subscribers of both CLECs and incumbent local exchange carriers (ILECs). TC 9-1-1 seeks access to the information to create map addresses in the TC 9-1-1 jurisdiction to respond accurately and expeditiously to requests for emergency service following an emergency 9-1-1 telephone call and to conduct a "clean-up" of

its database. TC 9-1-1 wishes to compare its information against the 9-1-1 database files to ensure maximum accuracy.

SWBT believes that Texas law permits the release of such information only in connection with the provision of emergency services; therefore, SWBT can release non- published ALI to 9-1-1 entities only after a caller has made a 9-1-1 emergency call. In addition, SWBT advises that the release of CLEC subscribers' ALI and/or ANI is limited by SWBT's interconnection agreements with CLECs and that many of the CLECs do not permit SWBT to share such information with any third party without the express permission of the CLEC. SWBT requests a rulemaking to address and approve the disclosure of ANI and ALI information to 9-1-1 entities, by 9-1-1 database management service providers, in the absence of a subscriber emergency call without any prior approval.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, May 17, 2002. Copies of the petition may be obtained from the commission's Central Records Division, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us. All inquires and comments concerning this petition for rulemaking should refer to Project Number 25717.

TRD-200202343
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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Public Notice of Workshop and Request for Comments Regarding Rulemaking to Address Municipal Authorized Review of Access Line Reporting

The Public Utility Commission of Texas (commission) will hold a workshop regarding municipal authorized review of access line reporting, on Thursday, May 9, 2002, at 10:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 25433, *Rulemaking to Address Municipal Authorized Review of Access Line Reporting* has been established for this proceeding. This rulemaking is pursuant to Texas Local Government Code §283.056(c)(3), which references a municipality's right "... to conduct an authorized review of the provider to ensure compliance with the access line reporting requirements of this chapter if commenced within 90 days after the filing of a certificated telecommunications provider's report of access lines."

By May 3, 2002, the commission requests that certificated telecommunications providers (CTPs) file non-confidential information including:

1. A description of the processes used to generate the quarterly access line reports; and

2. A list and general description of each document used in each step of the process.

The commission further requests CTPs to bring examples of these documents to the workshop, including documentation regarding how CTPs classify different services as access lines. These examples may contain fictitious or demonstrative information to protect the privacy of the end-use customers. Any materials used by CTPs for training internal staff on access line reporting are also acceptable and may also be useful.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. Electronic copies should also be submitted. All responses should reference Project Number 25433.

Questions concerning the workshop or this notice should be referred to Hayden Childs, Telecommunications Policy Analyst, Telecommunications Division, (512)936-7390 or hayden.childs@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202354
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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Public Notice of Workshop for Rulemaking Regarding Format of Telecommunications Utility Billing Statements

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding revisions to commission substantive rule §26.25, Issuance and Format of Bills. The commission asks that parties be prepared to discuss proposed drafts of a revised rule. The commission's workshop will be held on Friday, May 3, 2002, at 9:30 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24524, *Rulemaking to Implement SB 1659, 77th Legislature, Format of Telecommunications Utility Billing Statements*, has been established for this proceeding.

Interested parties are welcome to come prepared to comment upon commission staff developed drafts of a revised rule and may propose additional draft language for revisions at the workshop. A portion of the workshop will be reserved for open discussion of general or specific issues pertaining to revision of §26.25 pursuant to SB 1659.

Questions concerning the workshop or this notice should be referred to Janis Ervin, Telecommunications Division, 512-936-7372. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202353
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 16, 2002

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State Securities Board

Correction of Error

The State Securities Board withdrew proposed amendments to 7 TAC §115.1. The notice of withdrawal was published in the March 8, 2002, *Texas Register* (27 TexReg 1691).

Due to a typographical error, the *Texas Register* printed the date of filing for the notice as February 28, 2001. The correct date is February 28, 2002.

TRD-200202302
David Weaver
General Counsel
State Securities Board
Filed: April 12, 2002

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Telecommunications Infrastructure Fund Board

Notice of Request for Proposals for Discovery Grants

Notice of Request for Proposals for Discovery Grants (DI 5) to provide Innovative Telecommunications Technology Solutions in Texas

Introduction

The Telecommunications Infrastructure Fund (TIF) Board announces a Request for Proposals (RFP) for projects that support and explore cutting edge technology solutions to everyday problems that arise within the four constituent areas in the state of Texas.

Eligible Applicants

TIF is, by statute, able to fund four types of entities:

1) Elementary and secondary public school districts and campuses;

2) Institutions of higher education;

3) Libraries; and

4) Public and not-for-profit healthcare facilities and academic health science centers.

For the purposes of Discovery (DI 5) Grants, only these TIF eligible entities in Texas are eligible to apply.

Availability of Funds

A total of $5,000,000 is available for funding Discovery (DI 5) Grants during the 2002 fiscal year. Individual grant awards will be between $100,000 and $500,000.

Review and Award Criteria

Proposals that arrive after the deadline will not be reviewed. Proposals will be reviewed by a team of reviewers. Proposals will be evaluated using the criteria and described in the RFP.

Timeline for the RFP Process

Wednesday May 8, 2002 - RFP will be posted on the TIF website (www.tifb.state.tx.us)

Wednesday, May 22, 2002; 5:00 P.M. Central Time - Notice of Intent to Apply due

Friday June 28, 2002; 5:00 P.M. Central Time - Applications due

Friday August 16, 2002 - Notice of Grant Award

Friday August 30, 2002 - 18-month Grant Term Begins

February 28, 2004 - 18-month Grant Term Ends

To Access the Request for Proposals

The Telecommunications Infrastructure Fund (TIF) Board's Request for Proposals for Discovery (DI 5) Grants will be posted on the TIF website (www.tifb.state.tx.us) on Wednesday May 8, 2002. For more information, contact Amy Samet, Grant Administrator, by e-mail at asamet@tifb.state.tx.us or by phone at (512) 344-4334.

TRD-200202358
Frank Pennington
Director, Finance and Administration
Telecommunications Infrastructure Fund Board
Filed: April 16, 2002

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Texas A&M University, Board of Regents

Notice of Sale of Oil, Gas, and Sulphur Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 524, System Real Estate Office, The Texas A&M University System, John B. Connally Building, 301 Tarrow Drive, College Station, Texas, at 10:00 a.m., Wednesday, May 15, 2002, an oil, gas and sulphur lease on the following described land in Chambers County, Texas. The property offered for lease contains 158.90 mineral acres, more or less, of land and more particularly described as follows:

Being 158.90 acres, more or less, out of the I. & G.N.R.R. Co. Survey No. 3, and the Benjamin W. Douthit Survey, Chambers County, Texas. The tract offered is a portion of the Arthur George and Mary Emolene Owen Trust.

The minimum lease terms, which applies to the tract, approved by the Land and Mineral Resources Committee of the Board of Regents are as follows:

(1) Bonus: $150.00 per net mineral acre

(2) Royalty: 25%

(3) Delay Rental: $10.00 per net mineral acre.

(4) Primary term: Three (3) years

(5) Commitment to Drill: Within first year

(6) Continuous Drilling Commitment: 120 days

(7) Net Mineral Acres: 158.90 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to Board within twenty-four (24) hours after notification that the bid has been accepted. All payments shall be in cash, certified check, or cashier's check as the Board may direct. Failure to pay the balance of the amount bid will forfeit to the Board the 25% paid. The Board of Regents of The Texas A&M University System, **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS**. The successful bidder will be required to pay all advertising expense.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to:

Dan K. Buchly

Assistant Vice Chancellor and Director of Real Estate

System Real Estate Office

The Texas A&M University System

John B. Connally Building, Suite 519

301 Tarrow Drive

College Station, Texas 77840-7896

(979) 458-6350

TRD-200202218
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: April 10, 2002

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Request for Proposal

Texas A&M University seeks proposals from consulting firms to assist in reviewing analyzing and recommending solutions for the University's natural gas purchases, transportation and storage.

Information may be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., May 20, 2002.

TRD-200202301
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: April 12, 2002

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Texas Department of Transportation

Public Notice - Safe Routes to School Meeting

The Texas Department of Transportation (the department) will hold a stakeholder meeting regarding the Safe Routes to School Program as created by House Bill 2204, 77th Texas Legislature, 2001. By publication in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3043-3047), the department proposed rules concerning the Safe Routes to School Program (43 TAC §11.200, §§25.500-25.504).

The meeting will be held on Thursday, May 23, 2002, at 1:30 p.m. in Room A1-A on the 1st floor of 200 E. Riverside Dr., Austin, Texas 78704. During this meeting, the department will discuss comments received in response to the proposed rules, the department's proposed responses to these comments, and any other issues that the public wishes to discuss regarding the development of the Safe Routes to School Program.

Questions concerning the meeting or this notice should be referred to Carlos Lopez, P.E., Director, Traffic Operations Division, (512) 416-3200 or Meg Moore, P.E., Traffic Operations Division, (512) 416-3122.

TRD-200202398
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 17, 2002

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Public Notice - Statewide Transportation Enhancement

In the April 12, 2002, issue of the *Texas Register* (27 TexReg 3043-3047), the Texas Department of Transportation proposed amendments to 43 TAC §11.200, concerning the Statewide Transportation Enhancement Program, amendments to 43 TAC §§25.500-25.503, and new §25.504, concerning the Safe Routes to School Program. The department is extending the public comment period for these proposed rules from May 13, 2002, to May 31, 2002.

TRD-200202399
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 17, 2002

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Request for Qualifications for Engineering Services - Aviation Division

The Airport Sponsors listed, through their agent, the Texas Department of Transportation (TxDOT), intend to engage Aviation Professional Engineering Firms for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for each project listed.

Airport Sponsor: City of Fort Worth, Fort Worth - Spinks Airport. TxDOT CSJ No.: 0202FWSPK. Project Scope: Provide drainage improvements. Project Manager: Alan Schmidt.

Airport Sponsor: County of Live Oak, George West Municipal Airport. TxDOT CSJ No. 0216GWEST. Project Scope: Provide engineering/design services to extend Runway 13-31; widen Runway 13-31; construct turnaround; extend Medium Intensity Runway Lights Runway 13-31; relocate Medium Intensity Runway Lights Runway; and install erosion/sedimentation controls. At the sponsor's discretion, selection will be made from qualification statements. Project Manager: John Wepryk.

Interested firms shall utilize the Form 439, titled "Aviation Engineering Services Questionnaire", (August 2000 version). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address

http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm

Download the file from the selection "Engineer Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. **(Note: The form is an MS Word, Version 7, document).**

Two completed, unfolded copies of Form 439 (August 2000 version), for **each** project of interest to the engineer must be postmarked by U. S. Mail by midnight May 9, 2002. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on May 10, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m., May 10, 2002; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

E-MAIL DELIVERY OPTION Your form 439 may be e-mailed to TxDOT, at e-mail address:

AVNRFQ@dot.state.tx.us

E-mails must be **received by midnight** May 9, 2002. Received times will be determined by the marked time and date as the e-mail is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return email. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before e-mailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and **not change the formatting or information contained on the form following receipt**. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

Each airport sponsor's duly appointed committee will review all professional qualifications and may select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprise (DBE) participation or Historically Underutilized Business (HUB) participation, design schedule, and other project matters, prior to the final selection process. The final engineer selection by the sponsor's committee will generally be made following the completion of review of Request for Qualification statements/proposals and/or engineer interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200202367
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 17, 2002

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The University of Texas System

Notice of Intent to Procure Consulting Services

Invitation to Provide Offers

As required by Chapter 2254, *Texas Government Code*, the University extends an invitation (the "Invitation") to qualified and experienced consultants interested in providing the consulting services described in this notice. The consulting services the University seeks to procure will include a study of the mission and future course of The University of Texas at Dallas. A commission appointed by the Chancellor of The University of Texas System will oversee the contract for consulting services. If the University does not receive a better offer in response to the Invitation, the University intends to enter into a contract with Dr. Bryce Jordan and the University believes that it will be justified in awarding the contract to Dr. Jordan on a sole-source basis.

Consultants interested in submitting an offer can obtain more information by requesting a copy of the "Invitation for Consultants to Provide Offers of Consulting Services" from:

Ms. Kitt Krejci

Assistant Director

Office of Business and Administrative Services

The University of Texas System

201 West 7th Street, Suite 424

Austin, Texas 78701

Telephone: (512) 499-4366

Email: kittkrejci@utsystem.edu

All offers must be received no later than **3:00 p.m. Central Time** on **May 10, 2002** (the "Submittal Deadline"). Submissions received after the Submittal Deadline will not be considered.

Selection of the Successful Offer (defined below) submitted in response to the Invitation by the Submittal Deadline will be made using the competitive process described below. If the University awards a contract, the successful offer ("Successful Offer") will be the offer submitted in response to the Invitation by the Submittal Deadline that is the most advantageous to the University, considering price and the evaluation factors established by the University. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by the University on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by the University on the basis of negotiation with any of the consultants. At the University's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. The University will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. The University will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, the University reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, the University may permit a consultant to revise its offer in order to obtain the consultant's best final offer. The University is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by the University. The University reserves the right to (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in the Invitation with one or more consultants, (b) reject any and all offers and re-solicit offers or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of the University.

TRD-200202378
Francie Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: April 17, 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).

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