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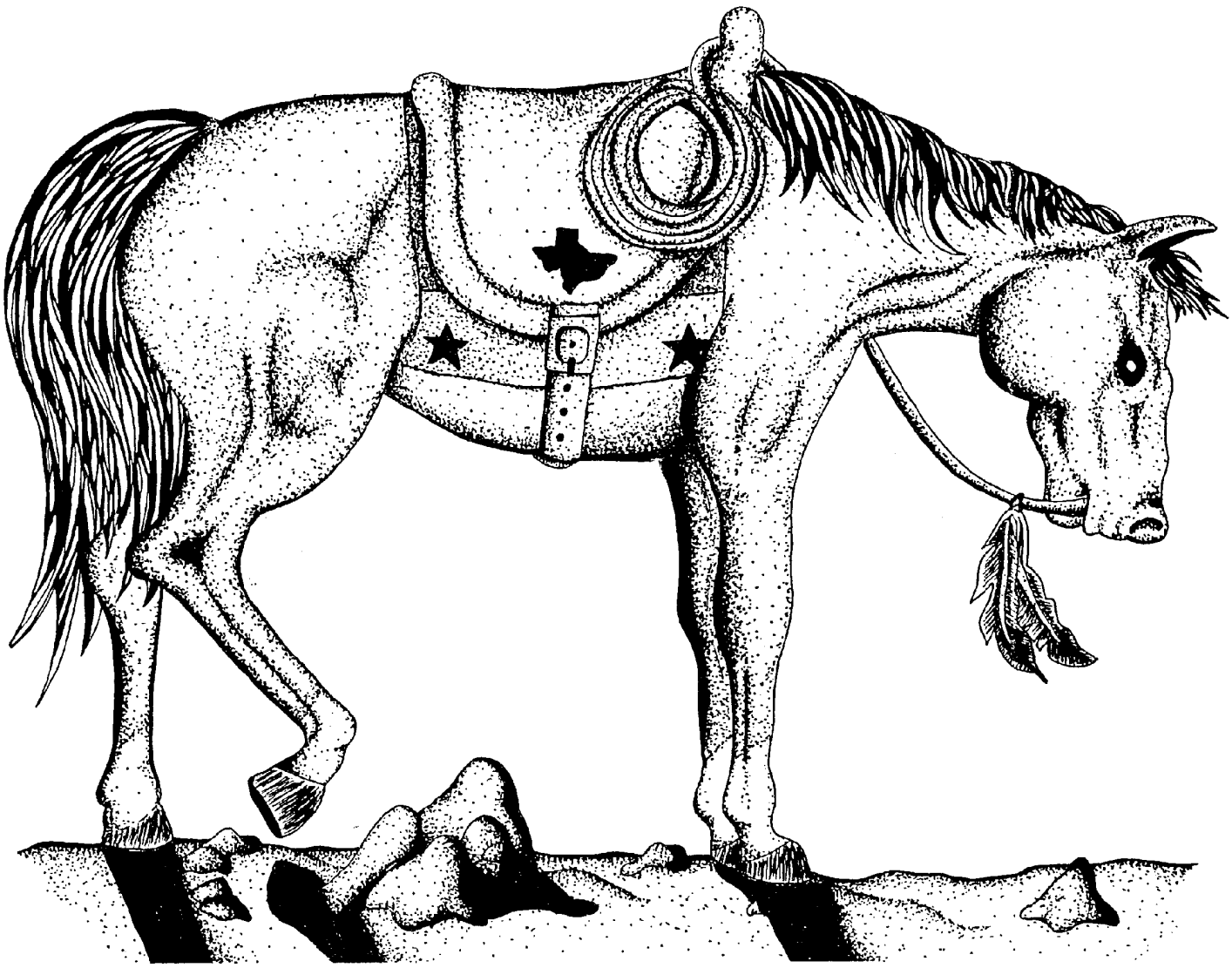

This month's front cover artwork:

Artist: *Crystal Iglecias*
11th Grade
Rockwall High School

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

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

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

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EXEMPT FILINGS

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Office of the Governor

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Manufactured Housing Division

Texas Natural Resource Conservation Commission

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Texas A&M University, Board of Regents

Texas Department of Transportation

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 May 23, 2002.

Appointed to the Licensed Court Interpreter Advisory Board, pursuant to HB 2735, 77th Legislature, for terms to be determined by lot, Penny Angelo of Midland, Elizabeth Crowder of Dallas, Raquel A. DeRoo of San Antonio, Melissa Barlow Fischer of San Antonio, Ann Murray Moore of McAllen, Bill C. Pittman of Austin, Araceli M. Sullivan of Cypress, Jack M. Webb of Houston, Sofia Leon of Austin.

Appointed to the Texas Online Authoriy for a term to expire on February 1, 2007, Cynthia J. Comparin of Dallas (replacing David Sikora of Austin who resigned).

Appointments for May 24, 2002.

Appointed to the Automobile Theft Prevention Authority, Board of Directors for a term to expire on February 1, 2005, Carlos Luis Garcia of Brownsville (replacing Al A. Philippus of Bulverde who resigned).

TRD-200203312

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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-0506

The Honorable Jack Skeen, Jr., Smith County Criminal District Attorney, Smith County Courthouse, 100 North Broadway, Tyler, Texas 75702, concerning whether the Smith County Commissioners Court violates the Open Meetings Act, chapter 551 of the Government Code, if it permits the Smith County Auditor to attend a meeting closed to consult with the county's attorney regarding pending litigation or settlement options, and related questions (RQ-0470-JC).

SUMMARY

With respect to a meeting of a county commissioners court closed under §551.071 of the Government Code to consult with the county's attorney regarding pending litigation or a settlement offer, the commissioners court may include the county auditor if the court determines that (1) the county auditor's interests are not adverse to the county's; (2) the county auditor's presence is necessary to the issues to be discussed; and (3) the county auditor's presence will not in effect, waive the attorney-client privilege. See Tex. Gov't Code Ann. §551.071 (Vernon 1994); Tex. R. Evid. 503. If a reviewing court concludes that the attorney-client privilege does not apply to an attorney-client consultation closed under §551.071, it may also find that the commissioners court violated the Open Meetings Act. We modify Attorney General Opinion JM-238 to the extent that it does not consider the attorney-client privilege currently provided by rule 503 of the Texas Rules of Evidence. See Tex. Att'y Gen. Op. No. JM-238 (1984) at 2.

With respect to a meeting closed under an exception other than §551.071, see, e.g., Tex. Gov't Code Ann. §§551.072, 551.074 (Vernon 1994), a county commissioners court may include the county auditor if the court finds that the auditor's interests are not adverse to the county's and that her participation is necessary to the anticipated deliberation. If a discussion convened under an exception other than §551.071 also involves an attorney-client communication, the commissioners may wish to evaluate the auditor's presence in light of the attorney-client privilege. All of these determinations require the commissioners court to resolve a number of fact issues, subject to review by a court.

The commissioners court should weigh the propriety of including the county auditor in a closed meeting consistently with the Open Meetings Act's open-meetings requirement and exceptions thereto.

If the county auditor is present during the open portion of a commissioners court meeting when the court announces that it will proceed into a closed meeting and the commissioners do not exclude the auditor, the court has included the auditor in its closed meeting.

Opinion No. JC-0507

The Honorable Rick Perry, Governor of Texas, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, concerning clarification of Attorney General Opinion JC-0426: Whether a state university may contract with a bank that employs a member of the board of regents as an officer (RQ-0473-JC).

SUMMARY

Section 404.0211 of the Government Code, which changes the common-law conflict-of-interest rule for state agency officers who select a depository for the funds of a state agency, does not apply to an institution of higher education such as Texas Woman's University. Attorney General Opinion JC-0426 is affirmed.

Opinion No. JC-0508

Mr. Jim Loyd, Executive Director, Texas Health Care Information Council, 206 East Ninth Street, Suite 19.140, Austin, Texas 78701, concerning whether a hospital is authorized to report information required by chapter 108, Health and Safety Code, without obtaining the written consent of the affected patient (RQ-0481-JC).

SUMMARY

Chapter 181 of the Health and Safety Code does not require hospitals to obtain written authorizations from patients prior to sending confidential identifying information to the Texas Health Care Information Council pursuant to chapter 108 of the Health and Safety Code. Section 181.103 of the Health and Safety Code expressly provides that a covered entity may use or disclose protected health information without the express written authorization of the individual to comply with the requirements of any state law. Because hospitals are required by chapter 108 of the Health and Safety Code to disclose protected health information to the council, they are within this exemption. Information regarding patient identity that is submitted by hospitals to the council

is protected by strict confidentiality provisions included in Health and Safety Code chapter 108.

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

TRD-200203328
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: May 29, 2002

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Requests for Opinions

RQ-0545

Mr. Tito Guerrero, III, President, Stephen F. Austin State University, P.O. Box 6078, SFA Station, Nacogdoches, Texas 75962-6078

Re: Whether a state university must conduct a student referendum in order to adopt an international education fee (Request No. 0545-JC)

Briefs requested by June 22, 2002

RQ-0546

The Honorable Rick Perry, Governor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711

Re: Computation of medical fees by the Workers Compensation Commission under section 413.011, Labor Code (Request No. 0546-JC)

Briefs requested by June 24, 2002

RQ-0547

The Honorable Patricia Gray, Chair, Committee on Public Health, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether certain property owned by a hospital district is subject to the "exclusive use" requirement of article XI, section 9 of the Texas Constitution, and related questions (Request No. 0547-JC)

Briefs requested by June 23, 2002

RQ-0548

The Honorable W.C. Kirkendall, District Attorney, 25th Judicial District, 113 South River, Suite 205, Seguin, Texas 78155

Re: Whether a commissioners court may set the daily reimbursement rate of expenses for grand jurors at a different rate from that of petit jurors (Request No. 0548-JC)

Briefs requested by June 22, 2002

RQ-0549

Mr. Ron Philo, Chair, Anatomical Board of the State of Texas, The University of Texas, Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Texas 78229-3900

Re: Whether a body donated to a named college or university is a body subject to distribution by the Anatomical Board of the State of Texas, and related questions (Request No. 0549-JC)

Briefs requested by June 23, 2002

RQ-0550

The Honorable Sherry L. Robinson, Waller County Criminal District Attorney, 836 Austin Street, Suite 105, Hempstead, Texas 77445

Re: Procedure by which a prosecutor may obtain a waiver from the state in cases of conflict of interest, and related question (Request No. 0550-JC)

Briefs requested by June 23, 2002

RQ-0551

Ms. Rebecca F. Olivares, Chair, Texas Workers' Compensation Commission, 4000 South IH 35, MS-4D, Austin, Texas 78704-7491

Re: Whether a rule of the Texas Workers' Compensation Commission that requires written communications regarding a claim to be provided to the claimant as well as his attorney, acts as an exception to Rule 4.02 of the State Bar Rules of Professional Conduct (Request No. 0551-JC)

Briefs requested by June 24, 2002

RQ-0552

Mr. Robert J. "Sam" Tessen, Executive Director, Office of Rural Community Affairs, 507 Sabine, Suite 300, Austin, Texas 78701

Re: Whether the Rural Foundation created by chapter 110, Health & Safety Code, may finance rural programs that are not health programs (Request No. 0552-JC)

Briefs requested by June 24, 2002

RQ-0553

Ms. Michele L. Henricks, Executive Director, Court Reporters Certification Board, 205 West 14th Street, Suite 101, Austin, Texas 78711

Re: Whether any action is required of the Court Reporters Certification Board in the implementation of section 57.021(d), Government Code (Request No. 0553-JC)

Briefs requested by June 24, 2002

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

TRD-200203313
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: May 29, 2002

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TEXAS ETHICS COMMISSION

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

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

Ethics Advisory Opinions

EAO-442. The Texas Ethics Commission has been asked whether the text of certain political advertising complies with section 255.006 of the Election Code. (AOR-494)

SUMMARY Section 255.006(c) of the Election Code requires the use of the word "for" in certain campaign materials to clarify that the candidate does not hold the office sought. The political advertising at issue in this opinion does not comply with section 255.006(c).

EAO-443. The Texas Ethics Commission has been asked whether a school district may allow candidates for election to the school district's board of trustees to have campaign flyers placed in an area of a school that is not accessible to the public. (AOR-495)

SUMMARY

For purposes of section 255.003, the "spending" of public funds includes the use of facilities maintained by a political subdivision.

The prohibition in section 255.003 of the Election Code applies to any use of a political subdivision's resources for political advertising.

This opinion does not apply to the use of the facilities of a political subdivision in a situation in which the facilities function as a public forum.

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

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

TRD-200203171
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: May 23, 2002

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.10

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.10, concerning proposed guidelines for implementing wireless E9-1-1 services with 9-1-1 funds deposited in the 9-1-1 Services Fee Fund.

The proposed rule would modify parts of the rule that have become outdated since the rule was last adopted and that would benefit from revision in light of modifications, clarifications, priorities, and rulings by the Federal Communications Commission in Docket number 94-102 related to wireless E9-1-1. It would also further clarify and incorporate the ad hoc process that has been used to determine reasonable costs for purposes of wireless service provider reimbursement and would recognize that the Commission may substitute the ad hoc process with a rule process in a separate rulemaking.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett 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 improved services in facilitating the delivery of a wireless emergency call through automatic number and location information data. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

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

The proposed rule is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.057, 771.071, 771.0711, 771.072, 771.075, and 771.078 which authorize the Commission, among other things, to adopt policies, procedures, and minimum performance standards for providing 9-1-1 service and prescribing the use of the 9-1-1 funds for providing 9-1-1 service.

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

§251.10. Guidelines for Implementing Wireless E9-1-1 Service.

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

(1) 9-1-1 Database Record--A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and conforms to NENA adopted database standards.

(2) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771 but the term does not include wireless 9-1-1 emergency service fees not deposited in the 9-1-1 Services Fee Fund.

(3) 9-1-1 Equipment--Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) 9-1-1 Governmental Entity--An RPC or District, as defined in Texas Health and Safety Code Chapter 771.001 [~~771.055~~], and Chapter 772, Subchapter B, C, [~~or~~] D, or F that administers the provisioning of 9-1-1 service.

(5) 9-1-1 Governmental Entity Jurisdiction--As defined in applicable law, Texas Health and Safety Code Chapters 771 and 772,

the geographic coverage area in which a 9-1-1 Governmental Entity provides emergency 9-1-1 service.

(6) 9-1-1 Operator--The PSAP operator receiving 9-1-1 calls.

(7) 9-1-1 Network Provider--The current operator of the selective router/switching that provides the interface to the PSAP for 9-1-1 service.

(8) Automatic Location Identification (ALI) Database--A computer database used to update the Call Back Number information of wireless end users and the Cell Site/Sector information for Phase I call delivery, as well as the X, Y coordinates for longitude and latitude for Phase II call delivery.

(9) Call Associated Signaling (CAS)--A method for delivery of the mobile directory number (MDN) of the calling party plus the emergency service routing digits (ESRD) from the wireless network through the 9-1-1 selective router to the PSAP. The 20 digits of data delivered are sent either over Feature Group D (FG-D) or ISUP from the wireless switch to the 9-1-1 router. From the router to the PSAP, the 20-digit stream is delivered using either Enhanced Multi-Frequency (EMF) or ISDN connections.

(10) Call Back Number--The mobile directory number (MDN) of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if a 9-1-1 call is disconnected. In certain situations, the MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to, situations affected by illegal use of Service (such as fraud, cloning, and tumbling) and uninitialized handsets and non-authenticated handsets.

(11) Cell Site--A radio base station in the WSP Wireless Network that receives and transmits wireless communications initiated by or terminated to a wireless handset, and links such telecommunications to the WSP's network.

(12) Cell Sector--An area, geographically defined by WSP (according to WSP's own radio frequency coverage data), and consisting of a certain portion of all of the total coverage area of a Cell Site.

(13) Cell Site/Sector Information--Information that indicates, to the receiver of the information, the location of the Cell Site receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.

(14) Cell Sector Identifier--The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.

(15) Class of Service--A standard acronym, code or abbreviation of the classification of telephone service of the Wireless End User, such as WRLS (wireless), that is delivered to the PSAP CPE.

(16) Digital Map--A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information, data sets related to emergency service provider boundaries, as well as other associated data.

(17) Emergency Communication District (District)--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, [~~or~~] D, or F.

(18) Emergency Service Number (ESN)--A number stored by the selective router/switch used to route a call to a particular PSAP.

(19) Emergency Service Routing Digits (ESRD)--As defined in J-Std-034, an ESRD is a digit string that uniquely identifies a base station, cell sector, or sector. This number may also be a network routable number (but not necessarily a dialable number).

(20) ESRK--Emergency Service Routing Key (ESRK) is a 10-digit routable, but not necessarily dialable, number translated from a cell sector identifier at the SCP that is used by the selective router to route wireless E9-1-1 calls to the appropriate PSAP. The ESRK is also the search-key for the mating of data that is provided to a PSAP by different paths, such as via the voice path and ALI data path. In daily use, the term ESRK is used to distinguish operational environments where the routing digits are assigned on a per destination PSAP basis as opposed to a per origination cell sector basis, which is the strict technical definition of an ESRD.

(21) [~~(20)~~] FCC--The Federal Communications Commission.

(22) [~~(21)~~] FCC Order--The Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-102, released July 26, 1996, and as amended by subsequent decisions.

(23) [~~(22)~~] Host ALI Records--Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Wireless End User making a 9-1-1 call.

(24) [~~(23)~~] Hybrid CAS/NCAS--This method for wireless E9-1-1 call delivery uses a combination of CAS and NCAS techniques to deliver the location and call back numbers to a PSAP. The MSC sends the location and call back information to a selective router using the standard CAS interface defined in J-Std-034. The selective router then uses an NCAS approach to deliver the information to a PSAP. That is, the selective router sends the location and call back information to the wireline emergency services database and the caller's call back number, or MDN, to the PSAP. The MDN is then used as a key to retrieve the cell/tower information for PSAP display.

(25) [~~(24)~~] J-Std-034--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the delta changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies that the interconnection between the mobile switching center (MSC) and the 9-1-1 selective router/switch is via:

(A) an adaptation of the Feature Group-D Multi Frequency (FG-D protocol), or

(B) the use of an enhancement to the Integrated Services Digital Network User Part (ISUP) Initial Address Message (IAM) protocol. In this protocol, the caller's location is provided as a ten-digit number referred to as the emergency services routing digits (ESRDs). The protocol NENA-03-002, Recommendation for the Implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP, is the corollary of J-Std-034 FG-D protocol.

(26) J-Std-036--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), that defines standards for E9-1-1 service relating to CAS, NCAS wireless E9-1-1 solutions, and to make provision for introduction of location determination technology for Phase II delivery of wireless E9-1-1 calls. Additional proposed solutions such as Hybrid are not referenced. Standards include, but are not limited to, required data elements, and signaling protocols. J-Std-034 addresses E9-1-1 Phase I, and J-Std-036 addresses E9-1-1 Phase II.

(27) [~~(25)~~] Mobile Directory Number (MDN)--A 10-digit dialable directory number used to call a Wireless Handset.

(28) [~~(26)~~] Mobile Switching Center (MSC)--A switch that provides stored program control for wireless call processing.

(29) [~~(27)~~] National Emergency Number Association (NENA).

(30) [~~(28)~~]NENA 02-010 [~~NENA 02-001~~]--A standard set of formats and protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee [~~(June 1998 revision)~~].

(31) [~~(29)~~] NENA 03-002--A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol, referenced in paragraph (25) [~~paragraph (24)~~] of this subsection, is the corollary protocol of NENA 03-002.

(32) [~~(30)~~] Non-Callpath Associated Signaling (NCAS)--This method for wireless E9-1-1 call delivery delivers routing digits over existing signaling protocol, including commonly applied CAMA trunking into and out of selective routers or SS7 into selective routers. The voice call is set up using the existing interconnection method that the wireline company uses from an end office to the router and from the router to the PSAP. The ANI delivered with the voice call is an emergency service routing key (ESRK) [~~digit (ESRD)~~], not a MDN. Where SS7 signaling (or other facility with 20-digit signaling capability) is in place, the MDN as well as the ESRK may be delivered over the voice path. All data, including the MDN and cell sector that receives the call, is delivered to the PSAP via the data path within the ALI record.

(33) [~~(31)~~] Phase I E9-1-1 Service--The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number and Cell Site/Sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 Governmental Entity [~~agency~~].

(34) [~~(32)~~] Phase II E9-1-1 Service--The service by which the WSP delivers to the designated PSAP the Wireless End User's call back number, Cell Site/Sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.

(35) [~~(33)~~] Phase I E9-1-1 Service Area(s)--Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service. Collectively, all such geographic portions of the 9-1-1 Governmental Entity's Jurisdiction subject to this rule shall be referred to herein as the "Phase I E9-1-1 Service Areas."

(36) [~~(34)~~] Regional Planning Commission (RPC)--A commission established under Local Government Code, Chapter 391, also referred to as a council of governments (COG).

(37) [~~(35)~~] Regional Strategic Plans--Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least five years into the future, beginning September 1, 1994. Within the context of Section 771.056(d), the [~~Advisory~~] Commission on State Emergency Communications (CSEC) [~~(ACSEC)~~] shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(38) [~~(36)~~] Public Safety Answering Point (PSAP)--A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code Chapters 771 and 772.

(39) [~~(37)~~] Service Control Point (SCP)--A centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.

(40) [~~(38)~~] Selective Router--A switching office placed in front of a set of PSAPs that allows the networking of 9-1-1 calls based on the ESRD assigned to the call.

(41) Standard Wireless E9-1-1 Service Agreement--The standard Phase I and/or Phase II Wireless E9-1-1 Service Agreement, as applicable, provided by the Commission and available on the Commission's web site.

(42) [~~(39)~~] Uninitialized Call--Any wireless E9-1-1 call from a wireless handset which, for any reason, has either not had service initiated or authenticated with a legitimate WSP.

(43) [~~(40)~~] Vendor--A third party used by either the 9-1-1 Governmental Entity or WSP to provide services.

(44) [~~(41)~~] WSP--The named wireless service provider and all its affiliates (collectively referred to as "WSP").

(45) [~~(42)~~] WSP Subscribers--Wireless telephone customers who subscribe to the Service of WSP and have a billing address within a 9-1-1 Governmental Entity Jurisdiction.

(46) [~~(43)~~] Wireless 9-1-1 Call--A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(47) [~~(44)~~] Wireless End User--Any person or entity receiving service on a WSP Wireless System.

(48) [~~(45)~~] WSP Wireless System--Those mobile switching facilities, Cell Sites, and other facilities that are used to provide wireless Phase I & II E9-1-1 service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771.051, the [~~Advisory~~] Commission on State Emergency Communications (Commission) shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The implementation of such service involves the procurement, installation and operation of equipment, database and network services and facilities designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. As mandated by [~~FCC Order, and as authorized by~~] Chapter 771, Section .0711, of the Texas Health and Safety Code, the CSEC [~~ACSEC~~] shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee to provide for the automatic number identification and automatic location identification of wireless E9-1-1 calls. Furthermore, the Commission recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Automatic number and location information is crucial data in facilitating the delivery of an emergency call. It is the policy of the Commission that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of wireless E9-1-1 services funded in part or in whole by [~~the~~] 9-1-1 funds as that

term is defined in this rule [~~referenced above~~]. Prior to the Commission considering allocation and expenditure of 9-1-1 funds for implementation of wireless Phase I and/or Phase II wireless E9-1-1 services, a RPC [~~COG~~] or other 9-1-1 Governmental Entity requesting funds from the Commission to provide wireless E9-1-1 service [~~and/or District receiving 9-1-1 fees and/or equalization surcharge funds from the Commission~~] shall meet the following applicable requirements listed in paragraphs (1)-(15) of this subsection:

(1) Commission Survey and Review--Prior to any wireless E9-1-1 Service implementation in any RPC [~~regional council (COG)~~] area, the Commission shall solicit in writing from each [~~all~~] WSP [~~WSPs~~] within the area [~~State of Texas~~] a detailed description of its technical approach to implementing Phase I and/or Phase II (where applicable); and, the proposed WSP reasonable cost associated with that implementation. The Commission will review and evaluate this information and consider its appropriateness for implementation. Upon completion of this process, the Commission will communicate these WSP evaluations to the RPCs [~~regional councils (COGs)~~], and notify the RPCs [~~COGs~~] that they may request and implement wireless E9-1-1 service as described in paragraphs (2)-(15) of this subsection.

(2) Phase I E9-1-1 Implementation--The provisioning for delivery of a caller's mobile directory number and the location of a cell site receiving a 9-1-1 call to the designated PSAP. Implementation of Phase I service must be accomplished within 6-months of written request according to the FCC Order. Prior to requesting [~~implementing~~] Phase I wireless E9-1-1 service, the following conditions must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) the RPC requesting service has determined, based on reasonable investigation, that it currently has sufficient funds to cover the costs of receiving and utilizing the wireless E9-1-1 Phase I information [~~sufficient funding mechanism for the recovery of all reasonable costs relating to the provisioning of such service is in place~~];

(B) the PSAPs administered by the RPC [~~9-1-1 entity~~] are capable of receiving and using the data associated with such service or has ordered the necessary equipment and has commitments from its supplier(s) that PSAPs will be capable within 6 months of the request to WSP;

[~~(C) 9-1-1 entity requests such service in writing from the service provider;~~]

(C) demonstrate, as applicable, that it has made a timely request to the 9-1-1 Network Provider and/or ALI Host Database Provider, as applicable and necessary, for any upgrades needed for the PSAP to receive and use the wireless E9-1-1 Phase I information;

(D) that the RPC and WSP both accept the roles and responsibilities in the implementation of wireless E9-1-1 service as provided in Attachment 1 of the standard Wireless E9-1-1 Service Agreement;

(E) If the Commission or Commission Staff makes the request to the WSP for Phase I service on behalf of the RPC or approves in writing the RPC's request to the WSP for Phase I service, then the RPC shall be deemed in compliance by the Commission with subparagraphs (A) and (C) of this paragraph for the purposes of this rule.

[~~(D) an executed contract between 9-1-1 entity and WSP for such service, and which includes a wireless service work plan, fee schedule and standards.~~]

(3) Phase II E9-1-1 Implementation--Provisioning [~~provisioning~~] for delivery of a caller's mobile directory number and the caller's location, within or exceeding [~~125 meters RMS~~] the level of accuracy required by the FCC, to the designated PSAP. Implementation of Phase II service will be consistent with the FCC Order. Prior to requesting [~~implementing~~] Phase II wireless E9-1-1 service, the following conditions, in addition to those listed in paragraph (2) of this subsection must be satisfied and demonstrated to the Commission as described in paragraph (14) of this subsection:

(A) the RPC requesting service has determined, based on reasonable investigation, that it currently has sufficient funds to cover the costs of receiving and utilizing the wireless E9-1-1 Phase II information;

(B) [~~(A)~~] provision for digital base map and graphical display, in conjunction with approved Strategic Plan and Commission §251.7 of this title (relating to Guidelines for Implementing Integrated Services);

(C) [~~(B)~~] demonstrate, and provide in writing, that the [~~location determination technology and~~] digital base map and PSAP CPE are capable of displaying [~~identifying~~] the caller's location within [~~125 meters in at least 67% of calls delivered, or the~~] a degree of accuracy that meets or exceeds the requirements of the FCC or has ordered the necessary equipment and has commitments from its supplier(s) that the PSAPs will be capable within 6 months of the request to WSP [~~as required by FCC Order~~]; and

(D) demonstrate, as applicable, that it has made a timely request to the 9-1-1 Network Provider and/or ALI Host Database Provider, as applicable and necessary, for any upgrades needed for the PSAP to receive and use the wireless E9-1-1 Phase I information.

(E) If the Commission or Commission Staff makes the request to the WSP for Phase II service on behalf of the RPC or approves in writing the RPC's request to the WSP for Phase II service, then the RPC shall be deemed in compliance by the Commission with subparagraphs (A) and (D) of this paragraphs for purposes of this rule.

[~~(C) a revised executed contract between 9-1-1 entity and WSP for such service and which includes a wireless service work plan, fee schedule and standards.~~]

(4) Responsibilities--It shall be the responsibility of the 9-1-1 Government Entity [~~entity~~], the WSP and any necessary third party (including, but not limited to, 9-1-1 Network Provider/Local Exchange Carrier, Host ALI Provider, SCP software developers and hardware providers, and other suppliers and manufacturers) to fully cooperate for the successful implementation and provision of Phase I and Phase II E9-1-1 service. These same parties should[~~are~~] also [~~responsible for ensuring that the deployment and implementation of~~] expend good faith efforts to make their wireless E9-1-1 solution [~~is thoroughly~~] interoperable with other wireless E9-1-1 solutions, including permitting the proper and seamless transfer of wireless E9-1-1 emergency call information to PSAPs between differing wireless E9-1-1 solutions. The Commission acknowledges that the successful and timely provision of such service is dependent upon the timely and effective performance and cooperative, good faith efforts of all of the parties listed in this section. All parties shall comply with the FCC Order, other FCC guidelines and requirements related to wireless E9-1-1 service, Texas laws and Commission Rules.

(5) Deployment--Unless otherwise approved by the Commission or Commission Staff as an exception, the RPC [~~9-1-1 entity~~] and the WSP will agree upon one, or a combination, of the following methods of wireless call delivery listed in subparagraphs (A)-(D) of this paragraph:

(A) Call Associated Signaling (CAS);

(B) Non-Callpath Associated Signaling (NCAS);

(C) Hybrid CAS/NCAS Architecture; and

(D) Exceptions to CAS, NCAS, or Hybrid CAS/NCAS, as in the case of stand alone ALI environments - specific solution should be illustrated and demonstrated prior to execution of contract.

(6) Data Delivery--Unless otherwise approved by the Commission, the RPC [~~9-1-1 entity~~] and the WSP will agree upon one of the following methods for the delivery of data elements necessary for Phase I E9-1-1 service. The RPC [~~9-1-1 entity~~] and WSP shall provision for redundancy within all methods.

(A) SS7/ISUP--WSP will deliver the twenty digits of information necessary for Phase I services by sending SS7 signaling messages in ISUP format to the 9-1-1 selective router;

(B) Feature Group D--WSP will deliver the twenty digits of information necessary for completion of Phase I services to the 9-1-1 selective router in the standard format required; and

(C) Service Control Point (SCP)--WSP will route all necessary information directly to the RPC's [~~9-1-1 entity's~~] ALI database through an independent service control point.

(7) Standards--Unless an exception is approved by the Commission, the RPC [~~9-1-1 entity~~], the WSP and any third party/vendor, will ensure that all appropriate and applicable industry standards be adhered to in provisioning E9-1-1 wireless service. These standards shall include, but not be limited to:

(A) J-Std 34 and NENA 03-002 for CAS and Hybrid CAS/NCAS deployments;

(B) NENA 02-010 [~~NENA 02-001~~] as benchmark data standards. All parties shall cooperate fully in the development and maintenance of all wireless data, such as cell site locations, Emergency Service Routing Digits, selective routing databases, and timely updates of any such data;

(C) Any and all modifications to these standards, currently under development by appropriate standards bodies, for CAS, NCAS, Hybrid CAS/NCAS, and Phase II/LDT deployments. Any such pending standard should be adhered to upon adoption;

(D) The Commission hereby establishes a standard Class of Service (COS) to be used by the RPC's [~~9-1-1 entity's~~] PSAPs and the WSPs to identify calls delivered to the PSAP as WRLS (wireless), or until a standard is established by NENA;

(E) Commission §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment) for provisioning of TTY/TDD equal access consistent with FCC rules and orders;

(F) All applicable standards shall be agreed upon by both parties to the standard Wireless [~~wireless~~] E9-1-1 Service [~~service~~] Agreement [~~contract.~~]; and

(G) The Commission may approve exceptions to the above standards upon demonstration by the WSP and the RPC [~~PSAP~~] of valid reasons and comparable efficiency and cost.

(8) Reasonable Cost Elements--The Commission will consider that the costs to be incurred by the RPC will be reviewed and approved within the existing Strategic Planning process and provided within CSEC §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Revenue Allocation). The Commission will consider that the reasonable costs incurred by the WSP to be reimbursed by the 9-1-1 Governmental Entity [~~entity~~] may include the following listed in subparagraphs (A)-(C) [~~(F)~~] of this paragraph:

(A) Trunking--To provide network connectivity between the necessary network elements, the following costs listed in clauses (i)-(iii) [~~(vi)~~] of this subparagraph may [~~shall~~] be allowed:

(i) Dedicated transport from [~~From~~] mobile switching center (MSC) to selective router at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule;

~~*(ii)* From selective router to PSAP;~~

~~*(iii)* From PSAP to ALI Database;~~

(ii) [~~(iv)~~] From mobile switching center (MSC) to service control point (SCP) at a rate and quanitity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule;

(iii) [~~(v)~~] From service control point (SCP) to ALI Database at a rate and quanitity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff or Commission rule; and

~~*(vi)* From ALI Database to PSAP.~~

~~[(B) Network--To provision the transference of necessary digits from the selective router to the PSAP in a CAS deployment, an upgrade or modification to the selective router will be necessary. The Commission will not consider this as an allowable cost.]~~

(B) [~~(C)~~] Database--To provision and deliver the necessary data through the network and to the PSAP for Phase I compliance, the following costs listed in clauses (i)-(ii) of this subparagraph may [~~will~~] be allowed:

(i) Non-recurring costs associated with initial emergency service routing digits (ESRD) or emergency service routing keys (ESRK) load into selective router or SCP at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff, or Commission rule; and

(ii) Monthly recurring costs associated with maintaining ESRD or ESRK data in the selective router or SCP at a rate and quantity no higher than agreed to within the standard Wireless E9-1-1 Service Agreement and as approved as reasonable by the Commission, Commission Staff, or Commission rule.

~~[(D) CPE--To provision the 9-1-1 entity's PSAP equipment to have the capability to receive and display information necessary to comply with Phase I call delivery requirements, the Commission has previously funded software upgrades to CPE for 20-digit and two 10-digit capability. These costs should be accommodated within the regional council's currently, or previously, approved strategic plan.]~~

~~[(E) Map Display--The cost to provision the 9-1-1 entity's PSAP equipment to have the capability to receive and graphically display caller's cell site/sector location information, as well as the X, Y (longitude, latitude coordinates).]~~

(C) [~~(F)~~] Comparable Costs--In determining the reasonableness of costs, the Commission or Commission Staff may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers. ~~[Training--The cost to train COG and/or PSAP personnel to efficiently and effectively receive and process Phase I & Phase II wireless E9-1-1 calls. This training shall be conducted by the COG, WSP, local service provider, and/or third party,~~

as necessary, upon initial deployment of wireless service and at regularly scheduled intervals. Training plans and any associated costs shall be proposed to COG within WSP written proposal of service, submitted to the Commission for approval via the strategic plan amendment review process as outlined in §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Equalization Surcharge Allocation) and included in an executed standardized contract for wireless E9-1-1 service.]

(9) Testing--The RPC[COG], WSP, local service provider and any third party shall conduct initial and regularly scheduled network, database and equipment testing to ensure the integrity of the existent and proposed wireline/wireless 9-1-1 system operated by the RPC [COG], for any Phase I and/or Phase II wireless E9-1-1 service deployment. These tests shall include, at a minimum:

(A) network connectivity;

[(B) call setup times;]

(B) [(C)] equipment capabilities of receiving and displaying callback number and cell site/sector information;

(C) [(D)] ability to transfer the wireless E9-1-1 call; [.]

(D) initial implementation field testing of each of a WSP's cell sites routing to the designated PSAP and delivery of accurate call data; and

(E) the routing and database delivery ability and accuracy of any new cell sites or maintenance sites, that may be added by a WSP in any particular region. The RPC [COG] shall submit the initial testing documentation and findings to the Commission within the strategic plan amendment approval process, [as referenced in paragraph (8) of this subsection, Reasonable Cost Elements.] as provided in CSEC §251.6 of this title, and as established through Commission wireless testing policies and procedures that comply with and supplement FCC guidelines. The RPC [COG] shall maintain documentation of initial, maintenance and regularly scheduled testing and notify the Commission of any on-going, negative outcomes.

(10) Fair and Equitable Provisioning of Wireless E9-1-1 Service--The RPC, WSP, local service provider, and any relevant third party shall provision E9-1-1 service in the RPC region as to achieve a consistent level of service to WSP End Users that is in compliance with applicable federal and state laws and rules and applicable industry standards. [The COG shall establish the level of wireless E9-1-1 service required within its region, and shall ensure that each WSP operating within its region provides comparable levels of wireless E9-1-1 service to all wireless subscribers within the region, within reasonable implementation parameters. In determining the reasonableness of costs, the Commission may compare the costs being submitted for recovery by one provider to the costs of other, similarly situated providers. No single WSP shall be reimbursed for costs above the comparable costs of the other WSP within the COG region.]

(11) Uninitialized Calls--Must be passed through the wireless 9-1-1 network and uniformly identified to the PSAP, in accordance with rules and procedures established by the FCC.

(12) Third Party Contracts--Any and all subcontracts between WSP and third party vendors, for the deployment of Phase I & II wireless E9-1-1 service deployments, shall adhere to the primary contract as executed between RPC [COG] and WSP, and the applicable FCC Orders, Guidelines and Rules.

(13) Proposals for Wireless E9-1-1 Service--All proposals by WSPs for wireless 9-1-1 service should be presented to the RPC [COG] in writing and shall include a complete description of network, database, equipment display requirements, training and accessibility elements. Such proposals should include detailed cost information, as well as technical solutions, network diagrams, documented wireless 9-1-1 call set-up times, deployment plans and timelines, specific work plans, WSP network contingency and disaster recovery plans, escalation lists, trouble call response times, as well as any other information required by the RPC [COG]. Unless otherwise confidential by law, all information provided to the RPC [COG] becomes a matter of public record and is subject to the Texas Public Information Act.

(14) Strategic Plan Amendment Review and Approval Process--Upon demonstration of compliance with paragraphs (2)(A) and (3)(B) [(A)] of this subsection and prior to executing a standardized Wireless [contract for wireless] E9-1-1 Service Agreement [9-1-1 service], the RPC [COG] shall submit such proposals, as described in paragraph (13) of this subsection, to the Commission for approval, via the strategic plan review and/or amendment process described in §251.6. Strategic Plan amendment requests should include all of the information provided by WSP to RPC [COG], as well as complete information regarding the geographic areas as well as the tandems, exchanges and PSAPs affected [effected] by the proposed deployment.

(15) Execution of Standardized Wireless E9-1-1 Service Agreement [Contract]--Upon review and approval by [ACSEC], the Commission, Commission Staff, or Commission rule, the RPC [COG] and WSP shall enter into a standardized Wireless E9-1-1 Service Agreement. The standard agreement [contract shall be provided by the Commission, and] shall include all of the information contained in the proposal and amendments reviewed and approved by the Commission. Commission staff shall review all such agreements [contracts] before they are executed, amended, or renewed. RPC [COG] shall provide the Commission a copy of all fully executed agreements [contracts].

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203229
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 305-6933

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 20. ADMINISTRATION
SUBCHAPTER A. CONTRACTS AND PURCHASES

16 TAC §20.5

The Railroad Commission of Texas (Commission) proposes amendments to §20.5, relating to Historically Underutilized Businesses. The rule adopts by reference the rules of the Texas Building and Procurement Commission (TBPC) in 1 Texas Administrative Code, §§111.11-111.28, relating to historically underutilized business program, and promotes full and equal business opportunity for all businesses in state contracting.

The Commission proposes to amend subsection (a)(4), (7), and (18) to incorporate TBPC's recent amendments to §§111.14, 111.17, and 111.28, which were effective May 8, 2002.

Rebecca Trevino, Director of Finance, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications to state or local governments as a result of the amendments. The public benefit anticipated as a result of the amendments will be the continued encouragement by the Railroad Commission of the use of historically underutilized businesses when procuring goods and services through race-, ethnic-, and gender-neutral means. There is no anticipated economic cost for small businesses, micro-businesses, or individuals who will be required to comply with the amendments.

Comments may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, or via electronic mail to kellie.martinec@rrc.state.tx.us. Comments will be accepted for 10 days following publication in the *Texas Register*. For more information, call Ms. Martinec at (512) 475-1295.

The Commission proposes the amendments under Texas Government Code, §2161.003 which requires the Commission to adopt the Texas Building and Procurement Commission's rules under §2161.002 as the agency's own rules, and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Texas Government Code, §2161.003, and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254, and Texas Civil Statutes, Article 6447, are affected by the proposed amendments.

Issued in Austin, Texas on May 21, 2002.

§20.5. Historically Underutilized Businesses.

(a) The Commission adopts by reference the rules of the Texas Building and Procurement [~~General Services~~] Commission in 1 TAC Chapter 111, Subchapter B, concerning historically underutilized business [~~certification~~] program, as effective on the following dates:

(1) §111.11 amended effective April 19, 2000;

(2) §111.12 amended effective June 13, 2000;

(3) §111.13 amended effective April 19, 2000;

(4) §111.14 adopted effective May 8, 2002 [~~April 19, 2000~~];

(5) §111.15 amended effective February 16, 2000;

(6) §111.16 amended effective June 13, 2000;

(7) §111.17 amended effective May 8, 2002 [~~February 16, 2000~~];

(8) §111.18 adopted effective October 4, 1995;

(9) §111.19 adopted effective October 4, 1995;

(10) §111.20 amended effective February 16, 2000;

(11) §111.21 amended effective December 7, 1997;

(12) §111.22 amended effective February 16, 2000;

(13) §111.23 amended effective May 16, 2001;

(14) §111.24 amended effective February 16, 2000;

(15) §111.25 adopted effective February 15, 1998;

(16) §111.26 adopted effective April 19, 2000;

(17) §111.27 adopted effective April 19, 2000; and

(18) §111.28 adopted effective May 8, 2002 [~~June 13, 2000~~].

(b) Copies of the rule are filed in the Railroad Commission's Finance and Accounting Division, located at the Commission's offices at 1701 North Congress, 9th floor, Austin, Texas 78701, and at all Commission district offices.

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

Filed with the Office of the Secretary of State on May 21, 2002.

TRD-200203113
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new §25.43, relating to Provider of Last Resort (POLR); the repeal of existing §25.43, relating to Provider of Last Resort (POLR); and amendments to §25.478, relating to Credit Requirements and Deposits; §25.480, relating to Bill Payment and Adjustments; §25.482, relating to Termination of Contract; and §25.483, relating to Disconnection of Service. Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service*, is assigned to this proceeding.

Proposed new §25.43 will alter the current structure for POLR service by phasing in the ability of all retail electric providers (REPs) to disconnect non-paying customers. In addition, the proposed new section will streamline the process for selecting POLRs by prescribing bid requirements and POLR selection methods and will make the POLR selection process transparent to the public. Proposed new §25.43 will also allow POLR rates to better follow market prices for power.

Proposed new §25.43 is intended to incorporate four standard terms of service agreements for the various types of POLR customers. These documents will be adopted by reference and can only be changed through the rulemaking process.

The proposed amendments to §25.478 will exempt medically indigent customers, as defined in the rule, from electric service deposit requirements and will allow low-income customers to pay deposits in two installments rather than one. The proposed amendments will also conform the provisions of this rule to the provisions of proposed §25.43. The amendments also eliminate more stringent deposit requirements for customers over the age of 65 and clarify that a guarantee agreement terminates when the customer whose service is guaranteed is no longer subject to the deposit requirements of the rule.

The proposed amendment to §25.480 makes non-substantive changes to correct references to other rule sections as a result

of amendments to §25.482 and §25.483. The proposed amendments to §25.482 and §25.483 will conform the provisions of those rules to the provisions of proposed new §25.43. More specifically, these amendments implement the introduction of the right to disconnect for all REPs.

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

Terri Eaton, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Eaton has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be more efficient provision of POLR service and more appropriate deposit and credit requirements for low-income and medically indigent customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, July 2, 2002, at 10:00 a.m. in the Commissioners' Hearing Room located on the seventh floor.

The commission seeks comments on the proposed repeal, new section, and amendments from interested persons. Comments on the proposed sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is June 28, 2002. Reply comments may be submitted by July 8, 2002. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 25360.

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

1. Are there methods for ensuring POLR service to customers as contemplated under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) (PURA) §39.101(b)(4) and §39.106, including customers who request POLR service, other than those set forth in the proposed amendments? If so, please explain those alternatives. Please identify the pros and cons of those methods and explain how they compare to the methods proposed in terms of ease of administration.

2. Instead of requiring the POLR rate to automatically fluctuate if prices move either up or down by more than 5.0%, would it be more appropriate to structure POLR service in a manner similar to price-to-beat service, where the provider would have the discretion of when (or whether) to adjust the rate, in accordance with the gas price formula outlined in the rule? Would the additional rate stability provided by such a structure be an added benefit to consumers and/or POLRs? Are there other methods for adjusting the price of POLR service that should be considered by the commission? If so, what are those methods and the benefits to customers and/or POLR providers?

3. Is the use of the average market clearing price for energy (MCPE) as the base for the POLR rate for large non-residential customers appropriate, or should some other market index, such as *Platt's MegaWatt Daily* be used? Is an index such as *Platt's MegaWatt Daily* that is developed as a survey of trades susceptible to manipulation?

4. Are the provisions of the Terms of Service Statements, in particular the provisions concerning limitation of liability, appropriate for POLR service? If not, what additional or alternative provisions are appropriate and why?

5. The proposed amendments to §25.483 extend the right to disconnect to any REP, including the POLR, for large non-residential customers. In addition, the proposed amendments provide that until January 1, 2005, both the POLR and the affiliated REP may disconnect residential and small non-residential customers for non-payment. The right of the affiliated REP to disconnect is part of the proposal for the affiliated REP to provide POLR service at the applicable price-to-beat rates and terms to residential and small non-residential customers whose service is terminated by a competitive REP for non-payment. After January 1, 2005, any REP or the POLR may disconnect residential and small non-residential customers, unless prior to that date the commission determines that authorizing all REPs to disconnect would be injurious to the market or would be likely to result in unlawful disconnections. Is this an appropriate approach to transition to a system where all REPs have the right to disconnect customers and bear the responsibility associated with that right? What are the potential short- and long-term implications for customers, REPs, transmission and distribution utilities, and the Electric Reliability Council of Texas (ERCOT)? Does two years provide adequate time to transition to this system or is another period of time more appropriate? Should the commission's goal be to transition to this type of system?

6. Under the commission's existing rules, the POLR is the only entity authorized to request that a transmission and distribution utility disconnect a customer, except when a customer with a peak demand of 50 kilowatts or above waives the applicable rule provisions through written agreement with its REP pursuant to §25.471(a)(4), relating to General Provisions of Customer Protection Rules. What are the potential market and rate implications associated with the POLR serving this function in the market? Is this consistent with the goals for a competitive market? Is it appropriate for the POLR to bear the financial risk associated with accidental, inadvertent, or wrongful disconnection of customers, rather than all REPs bearing this risk on behalf of their customers? Do proposed new §25.43 and the proposed amendments to §25.482 and §25.483 remedy this situation by phasing

in the ability of all REPs to disconnect customers, as discussed in Preamble Question 5?

7. The proposed POLR rule provides for selection of POLRs through competitive bid and lottery processes. In lieu of these processes, would it be a better practice to automatically assign customers of a defaulting REP to other REPs who serve the same customer class in the same transmission and distribution utility (TDU) service territory? Under the automatic assignment process:

(a) If a REP defaults, individual customers of the defaulting REP would be automatically and randomly assigned to all other REPs who meet the proposed eligibility requirements and provide retail service to the same customer class in the same TDU service territory.

(b) Upon being assigned a customer, the new REP would automatically place the customer on the most popular (highest number of subscribers) rate plan offered by the REP to the customer class in the same TDU service territory.

(c) The REP may market its rate plan to the customer, but unless the customer affirmatively chooses to subscribe to a rate plan, the customer may choose to leave the REP as soon as the switching process allows.

8. Under the automatic assignment process, should an equivalent number of customers be assigned to all eligible REPs, or should the number of customers a REP is assigned be dependent upon the REP's current market share of customers in that class and TDU territory? Is there a better basis for determining the apportionment of customers to the REPs? Should the affiliated REP be eligible to be assigned customers under this process? What are specific advantages and disadvantages of the automatic assignment process in comparison to the proposed competitive bid and lottery processes?

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

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

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2002) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101(b)(4) which provides that a customer is entitled to be served by a provider of last resort; §39.101(e) which authorizes the commission to enact rules to carry out the provisions of §39.101(a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit and termination of service; and §39.106 which directs the commission to designate providers of last resort in areas of the state where customer choice is in effect.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101(b)(4), 39.101(e), and 39.106.

§25.43. Provider of Last Resort (POLR).

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203232
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 936-7308

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16 TAC §25.43

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2002) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101(b)(4) which provides that a customer is entitled to be served by a provider of last resort; §39.101(e) which authorizes the commission to enact rules to carry out the provisions of §39.101(a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit and termination of service; and §39.106 which directs the commission to designate providers of last resort in areas of the state where customer choice is in effect.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101(b)(4), 39.101(e), and 39.106.

§25.43. Provider of Last Resort (POLR).

(a) Purpose. The purpose of this section is to ensure that, as mandated by the Public Utility Regulatory Act (PURA) §39.106:

(1) A basic, standard retail service package will be offered by a POLR at a fixed, non- discountable rate to any requesting customer in all of the Texas transmission and distribution utilities' (TDU's) service areas that are open to competition; and

(2) All customers will be assured continuity of service if a retail electric provider (REP) terminates service in accordance with the termination provisions of Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service).

(b) Application.

(1) This section applies to REPs that may be designated as POLRs in TDU service areas in Texas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) exercises its right to designate a POLR within its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (p) of this section to select a POLR within the electric cooperative's service area.

(2) POLR service for a residential or small non-residential customer of a competitive REP whose electric service is terminated for non-payment under the provisions of §25.482 of this title (relating to Termination of Contract) shall be provided by the affiliated REP for that POLR area. The provisions of this section do not apply to any affiliated REP serving as POLR for non-paying residential and small non- residential customers of competitive REPs except as otherwise specifically stated herein.

(3) A non-paying residential or small non-residential customer of an affiliated REP whose service is terminated for non-payment shall not be transferred to the POLR selected under this section.

(4) A large non-residential customer whose service is terminated for non-payment shall not be transferred to the POLR after December 31, 2002. Notwithstanding the foregoing, a non-paying large non-residential customer may be transferred to the POLR if that customer is receiving service under a contract entered into prior to June 1, 2002, the original term of which has not expired at the time transfer to POLR is requested, and if the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

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

(1) Basic firm service--Electric service that is not subject to interruption for economic reasons and that does not include value added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(2) Large non-residential customer--A non-residential customer with a peak demand above one megawatt (MW).

(3) Non-discountable rate--A rate that does not allow for any deviation from the price offered to all customers within a class, except as provided in §25.454 (relating to Rate Reduction Program).

(4) POLR area--The service area of a TDU in an area where customer choice is in effect, except that the POLR area for Central Power and Light Company shall be deemed to include the area served by Sharyland Utilities, L.P.

(5) Provider of last resort (POLR)--A REP certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with this section or an affiliated REP serving a customer whose service has been terminated for non-payment in accordance with the provisions of this section and §25.482 of this title.

(6) Residential customer--A residential customer as defined in §25.41 of this title (relating to the Price to Beat).

(7) Small non-residential customer--A small commercial customer as defined in §25.41 of this title.

(d) POLR service.

(1) For the purpose of POLR service, there will be three classes of customers: residential, small non-residential, and large non-residential.

(2) The POLR may be designated to serve any or all of the three customer classes in a POLR area. Within the customer class it is designated to serve, the POLR shall provide service to the following customers:

(A) Any customer requesting POLR service; and

(B) Any customer not receiving service from its selected REP for any reason other than non-payment who is automatically assigned to the POLR.

(3) The POLR shall offer a basic, standard retail service package, which will be limited to:

(A) Basic firm service;

(B) Call center facilities for customer inquiries;

(C) Standard retail billing (which may be provided either by the POLR or another entity);

(D) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund; and

(E) Standard metering, consistent with PURA §39.107(a) and (b) (which may be provided either by the POLR or another entity).

(4) The POLR shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), provide billing and collection duties for REPs who have defaulted on payments to the servicer of transition bonds or to TDUs.

(e) Standards of service.

(1) A REP who has been designated by the commission to serve as POLR for a class in a given area shall serve any customer in that class as described in subsection (d)(2) of this section.

(2) A POLR shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter. In addition, the POLR shall be held to the following general standards:

(A) The POLR shall inform any customer transferred to it that it is now providing service to the customer and disclose all charges for which the customer will be responsible;

(B) The POLR shall provide a commission-maintained list of certified REPs to any customer who inquires about selecting a provider;

(C) The POLR may not require that a customer sign up for a minimum term as a condition of service, except that if the POLR offers a level or average payment plan in accordance with Subchapter R of this chapter, a residential or small non-residential customer who elects to receive service under such plan may be required to sign up for a minimum term of no more than six months.

(f) Customer information.

(1) Forms. The commission adopts by reference the following forms: Terms of Service Agreement, Provider of Last Resort (POLR) Residential Service; Terms of Service Agreement, Provider of Last Resort (POLR) Small Non-residential Service (Below 50 kW); Terms of Service Agreement, Provider of Last Resort (POLR) Small Non-residential Service (50 kW to 1 MW); and Terms of Service Agreement, Provider of Last Resort (POLR) Large Non-residential Service. These forms are effective for all POLR service rendered after December 31, 2002. These forms may only be changed through the rulemaking process and are available in the commission's Central Records Division and on the commission's website at www.puc.state.tx.us.

(2) Provision of information to customers. The POLR shall provide each new customer the terms of service agreement applicable to the specific customer.

(g) General description of POLR selection process.

(1) POLR selected for areas where customer choice is in effect. The commission shall designate certified REPs to serve as POLRs in areas of the State in which customer choice is in effect, except that the commission shall not designate the POLR in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated its POLR designation authority to the commission in accordance with subsection (p) of this section.

(2) Process. The commission will solicit bids for POLR service for two-year terms as specified in paragraph (3) of this subsection. Bids shall be solicited from REPs that are eligible to provide POLR service under the provisions of subsection (h) of this section. The process for evaluating such bids is specified in subsection (i) of this section and the basis upon which bids shall be compared is specified in subsection (k)(3) of this section. If no eligible bids for a POLR customer class in a POLR area are submitted, the POLR shall be selected by lottery under the procedures set forth in subsection (j) of this section and the POLR rate established under the provisions of subsection (k) of this section.

(3) Term. Beginning January 1, 2003, each POLR shall *serve* a two-year term. Notwithstanding the foregoing, in the Oncor Electric Delivery Company (Oncor), Texas-New Mexico Power Company (TNMP), and West Texas Utilities Company (WTU) POLR areas, the POLR term beginning January 1, 2003 shall expire on December 31, 2003. POLR service terms in the Oncor, TNMP, or WTU POLR areas shall, beginning in 2004, start in even-numbered years. POLR service terms in the Reliant Energy HL&P and Central Power and Light Company POLR areas shall start in odd-numbered years. The term for POLR service for other POLR areas shall be determined at the time customer choice is initiated in those areas.

(h) REP eligibility to serve as POLR. Each year, the commission shall determine the eligibility of certified REPs to serve as POLR for the terms scheduled to commence in January of the next year.

(1) Information requirements. The commission may require a REP and its affiliates to provide information to the commission necessary to establish that REP's eligibility to serve as POLR. Specific information received from a REP that is responsive to such a request by the commission shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). However, the commission's determination regarding eligibility of a REP to serve as POLR under the provisions of this section shall not be considered confidential information.

(2) Criteria. During the term of the price to beat for a particular customer class, an affiliated REP is ineligible to serve as POLR for that class in the POLR area defined by the boundaries of its affiliated TDU. A REP is also ineligible to provide POLR service to a particular customer class in a POLR area if:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission or that REP's certificate has been suspended or revoked by the commission;

(B) On a national basis, the REP and its affiliates did not serve on the first business day of June of the year an amount of load that was equal to or greater than 1.0% of the peak load in Texas for the customer class in areas where customer choice was in effect;

(C) Information available to the commission indicates that the REP may not be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the POLR term;

(D) On the expected date of bid submittal, the REP will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class in Texas; or

(F) The REP's customers are limited to its own affiliates.

(3) Publication of notice of eligibility. For each POLR term scheduled to commence in January of the next year, except for the year 2003, the commission shall publish the names of all of the REPs eligible to provide POLR service for each customer class in each POLR area. The notice shall be published in the *Texas Register* prior to or contemporaneously with publication of the invitation for bids. For 2003, affiliated REPs shall be considered eligible REPs.

(i) Bid process. Initially, a competitive bid process will be used to select the POLR for each customer class in each designated POLR area.

(1) Invitation to bid. Before the expiration of a term of POLR service in a POLR area, the commission shall issue an invitation for bids for POLR service for each customer class in the POLR area. Notice of the bid invitation, any submission requirements, the submission deadline, and the project number assigned to the bid process for that POLR area shall be published in the *Texas Register*. A separate project number shall be designated for each POLR area.

(2) Bidder qualifications. A REP that has met the eligibility requirements of subsection (h) of this section shall be considered a qualified bidder.

(3) Submission of bids.

(A) Separate bids required. A bidder may submit a bid to serve any of the three customer classes in a POLR area. Bids for each customer class in a POLR area shall be submitted separately.

(B) Filing and content. Each bid shall be filed in the appropriate project number on or before the date and time specified in the bid invitation; identify only one POLR area; specify only one customer class; include a bid in conformance with the rate structure for the class; and not contain any information that will be considered, after the closing date for submission of all bids, to be confidential or proprietary by the filing party.

(C) Designation of preference. If on the first business day of June of the year in which a bid is submitted, the bidder serves, on a nationwide basis, an amount of load that is less than 5.0% of the total peak load in Texas on that day for the particular class for which the bid is submitted, and the bidder submits more than one bid for POLR service for that class, then the bidder may include in its bid a statement indicating its order of preference in POLR areas.

(4) Filing under seal. Prior to the closing date specified in the bid invitation, bids must be filed under seal for the limited purpose of ensuring the confidentiality of the bids submitted.

(5) Bid opening and public comment.

(A) All bids filed under seal shall be opened and filed publicly by commission staff in the applicable project number by 5:00 p.m. on the third business day following the submission date identified in the bid invitation.

(B) If the bid opening is cancelled, the bids filed under seal will be returned unopened to the bidders.

(C) Interested persons may submit comments on bids in the applicable project up to the 10th calendar day after the bid submission deadline specified in the bid invitation. Interested persons may submit reply comments on bids up to the 15th calendar day after the submission deadline specified in the invitation. All comments and reply comments shall be filed in the applicable project.

(6) Evaluation of bids.

(A) Bids that have been rejected pursuant to subparagraph (B) of this paragraph shall not be evaluated. All bids shall be evaluated on the basis of price in accordance with the provisions of subsection (k)(3) of this section. If two or more bidders bid the same

lowest price, the lowest bidder shall be determined by lottery in accordance with the provisions of subsection (j) of this section, with the pool of lottery candidates limited to the bidders submitting tie bids. If, with respect to a particular class of customers, a bidder described in paragraph (3)(C) of this subsection submits the lowest bid for that class of customers in two or more POLR areas, staff shall determine that the bidder submitted the lowest price in the POLR area according to the preference statement submitted by the bidder with its bids. If the bidder did not state a preference or the preferences stated are irreconcilable, the bidder shall be deemed to prefer to serve in the POLR area to which the lowest project number has been assigned.

(B) The commission shall reject a bid for any of the following reasons:

(i) The bidder is not qualified.

(ii) The bid was received by the commission after the date and time specified in the bid invitation.

(iii) The bid did not conform to a requirement described in the bid invitation.

(iv) The rate structure submitted in the bid deviated from the rate structure applicable to the customer class or the bid price exceeds the maximum level specified in subsection (k)(3) of this section.

(v) The bidder asserts to the commission that the bid contains information considered, after the closing date for submission of all bids, to be confidential or proprietary.

(vi) In the event a bidder described in paragraph (3)(C) of this subsection submits two or more bids for the same customer class in different POLR areas then all bids from that bidder for that customer class, other than the preferred bid, shall be rejected.

(7) Report to the commission. Staff shall report on the bid process for each POLR area to the commission. The report shall identify the POLR customer classes and POLR areas for which no bids were submitted. The report shall also identify all rejected bids and state the reason why each bid was rejected, describe conforming bids, and summarize the comments and reply comments received. For each customer class in each POLR area, the report shall include a recommendation by staff that POLR service be awarded to the bidder that offered the lowest price in a conforming bid or that the POLR for a given customer class and POLR area should be selected by lottery because no eligible bids were received.

(8) Commission action. For a particular POLR class and POLR area, the commission shall either award a bid consistent with the provisions of this section or reject all bids and direct that the POLR for that customer class and POLR area be determined by lottery.

(j) Lottery. The provisions of this subsection shall govern the manner in which a lottery to select a POLR for a given POLR area and customer class is conducted.

(1) Lottery candidacy. The commission shall designate a pool of lottery candidates for each customer class in each POLR service area. Every REP eligible to serve as a POLR is a candidate for the lottery unless:

(A) By virtue of having successfully bid for POLR service, the REP will be serving as POLR for that customer class in two or more service areas in January of the next year; or

(B) The REP will be serving as POLR for the customer class in another area during the upcoming POLR term and on the first business day of June the REP served, on a nationwide basis, an amount of load that was less than 5.0% of the total peak load in Texas for that particular customer class in areas of Texas where customer choice is in effect.

(2) Drawing. At a time and date noticed by the commission in the *Texas Register*, a separate drawing will be held for each customer class in each POLR area for which a POLR was not selected by bid. The drawings shall be held in the order of the project numbers assigned to the POLR service areas and interested persons may attend. The names of the lottery candidates shall be written on separate pieces of paper of identical size and color. A staff member shall place the names of the lottery candidates in a receptacle. A commission representative shall draw a piece of paper from the receptacle. The REP whose name is written on the piece of paper shall serve as the POLR for that customer class in that POLR area at the rate specified in subsection (k)(4) of this section.

(k) POLR rate.

(1) Components of POLR rate when service awarded by bid. The POLR rate for each customer class shall consist of non-bypassable charges, a monthly customer charge that does not change during the term of the POLR, an energy charge, and, for small and large non-residential customers, a demand charge.

(2) Elements of a bid.

(A) Residential customer class. Each bid for POLR service for the residential customer class shall include:

(i) A monthly customer charge that shall not change during the POLR term and that customer charge may be zero dollars; and

(ii) An energy charge subject to adjustment under the provisions of subsection (l) of this section, expressed as cents per kilowatt-hour (kWh). The energy charge may be differentiated into peak months (May through October) and off-peak months (November through April).

(B) Small non-residential customer class. Each bid for POLR service for the small non-residential class shall include the components for bids for the residential customer class as set forth in subparagraph (A) of this paragraph and a demand charge that may be zero dollars.

(C) Large non-residential customer class. Each bid for POLR service for the large non-residential customer class shall include:

(i) A monthly customer charge that shall not change during the POLR term and that customer charge may be zero dollars;

(ii) A demand charge that may be zero dollars; and

(iii) The percent over the energy reference price specified by the commission that the bidder will charge for energy. For POLR areas in the Electric Reliability Council of Texas (ERCOT), the energy reference price shall be the market clearing price for energy (MCPE) determined on the basis of 15-minute intervals. For POLR areas outside of ERCOT, the commission shall specify the energy reference price prior to the inception of retail customer choice.

(3) Comparison and rejection of bids. Bids for POLR service for residential and small non-residential service shall be compared on the basis of price as specified in this paragraph.

(A) Residential customer class. Bids for POLR service for residential customers shall be compared assuming monthly residential energy usage of 1000 kWh. If a bid for POLR service for this average usage level exceeds 125% of the applicable standard residential price to beat rate for that usage level at the time bids are submitted, the bid shall be rejected. For purposes of this rule, the standard residential

price to beat rate for residential service in each POLR area shall refer to the following price to beat tariffs, as amended or replaced:
Figure: 16 TAC §25.43(k)(3)(A)

(B) Small non-residential class. Bids for POLR service for small non- residential customers shall be compared assuming a demand level of 35 kW and monthly usage levels of 7,500 and 15,000 kWh. If the POLR rates bid for these average usage levels exceed 125% of the applicable standard commercial price to beat rate for both usage levels at the time bids are submitted, the bid shall be rejected. For purposes of this rule, standard commercial price to beat rate shall refer to the following price to beat tariffs, as amended or replaced:
Figure: 16 TAC §25.43(k)(3)(B)

(C) Large non-residential class. Bids for POLR service for large non- residential customers shall be compared assuming a monthly demand of 2.5 MW and monthly usage levels of 720,000 kWh and 1,440,000 kWh.

(4) POLR rates where POLR selected by lottery. This paragraph specifies the POLR rates that will be charged in a POLR area when the POLR is selected by lottery.

(A) Residential and small non-residential customer classes. The rate charged by a POLR selected by lottery shall be 125% of the applicable standard price to beat rate.

(B) Large non-residential class. The rate charged by a POLR selected by lottery shall be non-bypassable charges plus 150% of the applicable energy reference price as determined under paragraph (2)(C)(iii) of this subsection.

(5) Good cause adjustment to POLR rates. On a showing of good cause, the commission may permit the POLR to adjust the POLR rate, if necessary to ensure that the rate is sufficient to allow the POLR to recover its costs of providing service. Alternatively, the commission may rebid POLR service and relieve the current POLR of its POLR responsibilities. If POLR service is rebid, the process specified in subsection (i) of this section shall be followed except that eligible REPs shall be those REPs identified in the last list that was published, with the POLR that is being relieved of its duties deleted from the list. If the commission elects to rebid POLR service and the bid process is unsuccessful, the commission may reconsider adjusting the POLR rates or select an alternate POLR provider by lottery in accordance with the provisions of subsection (j) of this section.

(l) Adjustment to energy charge component of residential and small non-residential POLR rates. The energy charge component of the POLR rate for the residential and small non- residential customer classes shall be adjusted as specified in this subsection if POLR service was awarded by bid.

(1) Energy charge component reevaluated monthly. The energy charge component of the POLR rate for the residential and small non-residential customer classes shall be recalculated at the end of every month during the POLR term in accordance with the provisions of paragraph (2) of this subsection. If the recalculated energy charge varies by more than 5.0% from the time the energy charge was bid or last adjusted, then the energy charge of the POLR rate for the following month shall be equal to the recalculated energy charge. If the recalculated energy charge does not vary by more than 5.0% from the time the energy charge was bid or last adjusted, then the energy charge component shall not be adjusted for the following month. All adjustments shall take place on the first day of the month following the recalculation. Adjustments shall not occur during the month. The POLR shall submit its monthly rate to the commission within 15 days of the beginning of the month.

(2) Energy charge calculation.
Figure: 16 TAC §25.43(l)(2)

(3) Refunds. If in response to a complaint or upon its own investigation, the commission determines that a POLR failed to properly adjust the energy charge component of the POLR rate and as a result overcharged its customers, the commission shall require the POLR to issue refunds to the specific customers who were overcharged.

(m) Marketing to POLR customers. An employee answering the POLR phone line will read from a script to describe POLR service but may market the services of its affiliated REP or any other REP that has entered into a marketing agreement with the POLR. The POLR shall not discriminate between unaffiliated REPs in the terms and conditions of any such marketing agreement. ERCOT shall provide to REPs and aggregators on at least a quarterly basis an updated mass customer list of customers served by the POLR containing information similar to the information that the registration agent is authorized to release under §25.472 of this title (relating to Privacy of Customer Information).

(n) Transition of customers to POLR service.

(1) POLR service for a requesting customer is initiated when the customer makes arrangements for service.

(2) If the applicable independent organization, as specified by PURA §39.151, becomes aware that a REP is no longer scheduling for a customer, unless service to that customer has been interrupted for the reasons described in §25.483(c) of this title (relating to Disconnection of Service) or for non-payment of electric service charges, it will notify the POLR that the customer is switched to POLR service in accordance with the operating rules of the independent organization.

(3) If the REP terminates service to a customer whose consumption is determined by monthly meter readings without giving notice, the POLR shall prorate the customer's usage based on the customer's historic data or load profile to establish the customer's charges for the relevant portion of the billing cycle, unless the customer requests and is willing to pay for an out-of-cycle meter read. Nothing in this section precludes a POLR from having an out-of-cycle meter read performed for a new customer on its own initiative provided the POLR does not pass on the cost of that meter read to the customer.

(4) The POLR is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for POLR service at the POLR rate in effect at that time.

(5) If a REP terminates service to a customer, it is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination of the service and until the switchover to the POLR is complete.

(6) The POLR is financially responsible for all costs of providing electricity to customers from the time the switchover or initiation of service is complete until such time as the customer leaves POLR service.

(o) Termination of POLR status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR fails to maintain REP certification;

(B) If the POLR fails to provide service in a manner consistent with this section; or

(C) For good cause, provided the commission affords the POLR due process.

(2) If a POLR defaults or has its status revoked before the end of its term, the commission may appoint any certified REP, other than a REP serving only its own affiliates, serving a customer class in that area to become the POLR until a new POLR is selected pursuant to the provisions of this rule. The rate for such POLR service shall be the rate established pursuant to subsection (k)(4) of this section.

(p) Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may propose to delegate to the commission its authority to select a POLR under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions will apply:

(1) The board of directors will provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority will be made at least 30 days prior to the time the commission issues an invitation for bids to establish a POLR for a contiguous or surrounding POLR area;

(3) The delegation of authority will be for a minimum period corresponding to the period for which the solicitation will be made;

(4) The electric cooperative wishing to delegate its authority to designate a POLR will also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR within the electric cooperative's certificated service area; and

(5) If the competitive bidding process that includes the electric cooperative certificated area fails, the commission will automatically reject the delegation of authority.

(q) Reporting requirements. Each POLR and affiliated REP shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 days of the end of the quarter. No such report may be filed under a claim of confidentiality and the information provided in the report shall be made publicly available.

(1) For each month of the reporting quarter, the affiliated REP shall report:

(A) The number of residential customers who were disconnected for non- payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;

(B) The number of residential customers who were transferred to the affiliated REP by a competitive REP for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;

(C) The average amount owed to the affiliated REP by residential customers at the time of disconnection;

(D) The average amount owed to the affiliated REP by residential customers eligible for the rate reduction program at the time of disconnection;

(E) The number of small non-residential customers who were disconnected for non-payment;

(F) The average amount owed to the affiliated REP by small non-residential customers at the time of disconnection.

(2) For each month of the reporting quarter, each POLR other than an affiliated REP acting as POLR for non-paying customers shall report the total number of new customers acquired by the POLR and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title (relating to Credit Requirements and Deposits) and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(3) For each month of the reporting quarter each POLR, other than an affiliated REP serving as POLR for non-paying customers, shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the POLR;

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(D) The average amount owed to the POLR by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(4) For the entirety of the reporting quarter, each POLR other than an affiliated REP acting as POLR for non-paying customers shall report the average number of calendar days a customer received POLR service.

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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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §§25.478, 25.480, 25.482, 25.483

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2002) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101(b)(4) which provides that a customer is entitled to be served by a provider of last resort; §39.101(e) which authorizes the commission to enact rules to carry out the provisions of §39.101(a)-(d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit and termination of service; and §39.106 which directs the commission to designate providers of last resort in areas of the state where customer choice is in effect.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101(b)(4), 39.101(e), and 39.106.

§25.478. Credit Requirements and Deposits.

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

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

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

(A) A residential customer may be deemed as having established satisfactory credit if the customer:

(i) (No change.)

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

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

[(iv) did not have service disconnected for nonpayment.]

(B) (No change.)

(C) A residential customer may be deemed as having established satisfactory credit if the customer is 65 years of age or older and the customer's account with the electric utility (prior to 2002) or any other REP has not had a delinquent balance incurred within the last 12 months[two years] for the same type of service applied for.

(D) (No change.)

(E) A residential customer may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer to be considered medically indigent:

(i) the customer's household income must be at or below 150% of the poverty guidelines as certified by a government funded energy assistance program provider; and

(ii) the customer or customer's spouse must have been certified by that person's attending physician (for the purposes of this subsection, the term "physician" shall mean any public health official, including home care providers, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar health official) as being unable to perform three or more activities of daily living, or the customer's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income.

(F) [(E)] Pursuant to PURA §39.107(g), a REP who requires pre- payment by a metered residential customer as a condition of initiating service may not charge the customer an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(G) [(F)] The REP may obtain payment history information from the customer's previous REP or from an accredited credit reporting agency. The REP shall obtain the customer's authorization pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), prior to obtaining such information from the customer's prior REP. A REP shall maintain payment history information for two years after electric service has been terminated to a customer in order to be able to provide credit history information at the request of the former customer. Additionally, a REP may utilize credit reporting agencies to document customers with poor credit/payment histories.

(4) (No change.)

(b) (No change.)

(c) Initial deposits.

(1) (No change.)

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

(3) (No change.)

(d) Additional deposits by existing customers.

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

(A) (No change.)

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

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

(3) (No change.)

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

additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document.

(e) (No change.)

(f) Amount of deposit.

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

(4) If a customer is qualified for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer shall be eligible to pay any deposit that exceeds the actual estimated billing for the next month or one-twelfth of the estimated annual billing in two installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting an additional deposit.

(A) The first installment shall not exceed the greater of the estimated billing for the next month or one-twelfth of the estimated annual billing and shall be due no earlier than ten days after the issuance of written notification.

(B) The second installment for the remainder of the deposit shall be due no earlier than 40 days after the issuance of written notification. The REP or POLR shall issue a written notification regarding the remaining deposit amount due within 20 days, but no sooner than ten days, prior to the due date for the second installment.

(g) - (i) (No change.)

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

(1) - (5) (No change.)

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

(k) Refunding deposits and voiding letters of guarantee.

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

(3) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(l) - (m) (No change.)

§25.480. Bill Payment and Adjustments.

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

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

(1) (No change.)

(2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in subsection (e) of this section, or to customers who qualify for such plans pursuant to §25.482(g)[~~(f)~~] of this title (relating to Termination of Contract) or §25.483(j)[~~(i)~~] of this title (relating to Disconnection of Service).

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

(6) A copy of the deferred payment plan shall be provided to the customer and:

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

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

(H) (No change.)

(7) A REP may pursue termination of service (or disconnection of service in the case of the POLR) when a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or disconnected until appropriate notice has been issued, pursuant to §25.483 of this title for the POLR or §25.482 of this title for other REPs, to the customer indicating that the customer has not met the terms of the plan. The REP may renegotiate the deferred payment plan agreement prior to disconnection. If the customer does not fulfill the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.

(k) (No change.)

§25.482. Termination of Contract.

(a) Applicability. This section applies only to retail electric providers (REPs) that may not authorize disconnection of a customer's electric service pursuant to §25.483 of this title (relating to Disconnection of Service).

(b) [~~(a)~~] Termination policy. A REP[~~retail electric provider (REP)~~] may terminate its contract with a customer for nonpayment of electric service charges and, if no other REP extends service to that customer, service shall be offered by the affiliated REP acting as the provider of last resort (POLR) for non-paying customers. If a customer makes payment or satisfactory payment arrangements prior to the termination date, a REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. If a REP chooses to terminate its contract with a customer, it shall follow the procedures in this section, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.

(c) [~~(b)~~] Termination prohibited. A REP may not terminate its contract with a customer for any of the following reasons:

(1) delinquency in payment for electric service by a previous occupant of the premises if the occupant is not of the same household;

(2) failure to pay for any charge that is not related to electric service;

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

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

(5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or

unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

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

(d) [~~(c)~~] Termination on holidays or weekends. Unless requested by the customer, a REP shall not terminate a contract for electric service on holidays or weekends.

(e) [~~(d)~~] Termination due to abandonment by the REP. A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. In the event a provider terminates a customer's contract due to abandonment, that provider shall not collect or attempt to collect penalties from that customer.

(f) [~~(e)~~] Termination of energy assistance clients. A REP shall not terminate a contract for service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service.

(g) [~~(f)~~] Extreme weather. A REP shall not seek to terminate a residential customer's contract for electric service due to non-payment during an extreme weather emergency. A REP [~~and~~]shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).

(h) [~~(g)~~] Termination notices. Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) a REP may issue a notice of termination of contract. Any termination notice shall:

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

(2) be a separate mailing or hand delivered with a stated date of termination with the words "termination notice" or similar language prominently displayed. A REP may send an additional notice by email or facsimile.

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

(i) [~~(h)~~] Contents of termination notice. Any termination notice shall include the following information:

(1) The reasons [~~reason~~] for the termination of the contract;

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

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

(4) The amount overdue, if applicable;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm."

(6) A statement that informs the customer of the right to obtain services from another licensed REP, including the affiliated REP or a POLR, and that information about other REPs, the affiliated REP, or the POLR can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another REP shall have their electric service transferred to the affiliated REP[~~POLR~~], in accordance with the applicable rules or protocols, and may be required to pay a deposit, or prepay, to receive ongoing electric service. The REP shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from another REP, the affiliated REP, or the POLR.

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will[~~with~~] be either returned to the customer or transferred to the new REP, at the customer's designation.

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

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

(j) [~~(i)~~] Notification of the registration agent. After the expiration of the notice period in subsection (h)[~~(g)~~] of this section, a REP shall notify the registration agent of a switch request in a manner established by the registration agent so that the customer will receive service from the affiliated REP[~~POLR~~], unless the customer selects another REP or the POLR prior to the effective date of the switch.

(k) [~~(j)~~] Customer's right to terminate a contract without penalty. As disclosed in the customer's terms of service document, a customer may terminate a contract without penalty in the event:

(1) The customer moves to another premises;

(2) Market conditions change and the contract allows the REP to terminate the contract without penalty in response to changing market conditions; or

(3) A REP notifies the customer of a material change in the terms and conditions of their service agreement.

§25.483. Disconnection of Service.

(a) Disconnection and reconnection policy. Only a transmission and distribution utility, municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate transmission and distribution utility, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, using the appropriate Texas Standard Electronic Transaction (SET), and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall follow the procedures in this section or procedures that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and

the period between notice and disconnection. Nothing in this section shall be interpreted to require a REP to disconnect a customer.

(b) Disconnection authority.

(1) Any REP or the provider of last resort (POLR) may authorize the disconnection of a large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless that customer is receiving service under a contract entered into prior to June 1, 2002, the original term of which has not expired at the time transfer to POLR is requested, and if the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(2) Until January 1, 2005, and except as provided in subsection (d) of this section, only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title. After January 1, 2005, any REP or the POLR may disconnect a residential or small non-residential customer unless, prior to that date, the commission determines that authorizing all REPs to disconnect would be injurious to the market or would result in unlawful disconnections of residential and small non-residential customers. No later than June 1, 2004, commission staff shall file a report with the commission assessing the potential consequences of authorizing all REPs to disconnect residential and small non-residential customers.

(c) [~~(b)~~] Disconnection with notice. A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, [~~provider of last resort (POLR)~~] may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the termination date in the notice for any of the following reasons:

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

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

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

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

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

(d) [~~(c)~~] Disconnection without prior notice. Any[~~A~~] REP[~~, including a POLR, REP or affiliate REP,~~] may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

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

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

(3) Where service is reconnected without authority after disconnection for nonpayment;

(4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or

(5) Where there is evidence of theft of service.

(e) [~~(d)~~] Disconnection prohibited. A REP having disconnection authority under the provisions of subsection (b) of this section [~~POLR~~] shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

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

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

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

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

(5) Failure to pay disputed charges, except for the amount under dispute, until a determination as to the accuracy of the charges has been made by the REP[~~POLR~~] or the commission, and the customer has been notified of this determination;

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

(7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the REP[~~POLR~~] is unable to obtain the meter reading due to circumstances beyond its control.

(f) [~~(e)~~] Disconnection on holidays or weekends. Unless a dangerous condition exists or the customer requests disconnection, a REP having disconnection authority under the provisions of subsection (b) of this section[~~POLR~~] shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's[~~POLR's~~] personnel are available on those days to take payments and request reconnection of service and personnel of the transmission and distribution utility, municipally owned utility, or electric cooperative are available to reconnect service.

(g) [~~(f)~~] Disconnection due to abandonment by the POLR. A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(h) [~~(g)~~] Disconnection of ill and disabled. A REP having disconnection authority under the provisions of subsection (b) of this section [~~POLR~~] shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

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

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;

(B) Have the person's attending physician submit a written statement to the REP; and

(C) Enter into a deferred payment plan.

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

(i) [~~(h)~~] Disconnection of energy assistance clients. A REP having disconnection authority under the provisions of subsection (b) of this section[~~POLR~~] shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP[~~POLR~~] receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

(j) [~~(i)~~] Disconnection during extreme weather. A REP having disconnection authority under the provisions of subsection (b) of this section[~~POLR~~] shall not authorize a disconnect for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP[~~POLR~~] shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" shall mean a day when:

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

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

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

(1) The REP having disconnection authority under the provisions of subsection (b) of this section[~~POLR~~] shall send a notice to the customer as required by subsection (l)[~~(k)~~] of this section. At the time such notice is issued, the REP[~~POLR~~], or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

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

(l) [~~(k)~~] Disconnection notices. A disconnection notice for nonpayment [~~issued by a POLR~~]shall:

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

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

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

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

(m) [~~(l)~~] Contents of disconnection notice. Any disconnection notice shall include the following information:

(1) The reason for disconnection;

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

(3) The amount of all fees or charges which will be assessed against the customer as a result of the default;

(4) The amount overdue;

(5) A toll-free telephone number that the customer can use to contact the REP[~~POLR~~] to discuss the notice of disconnection or to file a complaint with the REP[~~POLR~~], and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"

(6) A statement that informs the customer of the right to obtain services from another licensed REP, and that information about other REPs can be obtained from the commission;

(7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation;

(8) The availability of deferred payment or other billing arrangements, if any, from the REP[~~POLR~~], and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(9) A description of the activities that the REP[~~POLR~~] will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP[~~POLR~~].

(n) [~~(m)~~] Reconnection of service. Upon a customer's satisfactory correction of reasons for disconnection, the REP shall notify the transmission and distribution utility, municipally owned utility, or electric cooperative, within one day, to reconnect the customer's electric service and shall reinstate the service.

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203234
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 936-7308

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.1, 70.50, 70.61, 70.70, 70.75, 70.90

The Texas Department of Licensing and Regulation proposes amendments to §§70.1, 70.50, 70.61, 70.70, 70.75, and 70.90 concerning industrialized housing and buildings.

The change to §70.50 deletes the requirement for the manufacturer to report the shipping address for each unit labeled and adds the requirement for the manufacturer to report the date the unit was labeled. The justification for the change is that the address to which the unit is shipped is not necessary to assure compliance with the requirements of the Texas Industrialized Housing and Buildings law and rules, but the date the unit was labeled is necessary to assure compliance.

The change to §70.61 adds the requirement that a substantial portion of the energy compliance design must be inspected at least once every third inspection. The justification for the changes is the passage of legislation requiring the establishment of procedures for administration and enforcement of the energy conservation codes adopted by the legislation.

The change to §70.70(c) adds the requirement that the manufacturer's compliance control inspection checklist include an energy compliance design checklist that enumerates the energy code-compliance features of the units constructed. The justification for the change is the passage of legislation requiring the establishment of procedures for administration and enforcement of the energy conservation codes adopted by the legislation.

The changes to §70.75 require that a copy of the energy compliance design checklist be provided to the purchaser of the unit or units from the manufacturer or industrialized builder. The justification for the change is the passage of legislation requiring the establishment of procedures for administration and enforcement of the energy conservation codes adopted by the legislation.

The 76th Legislature enacted HB3155 which made non-substantive changes to Article 9100 and codified the article into the Occupations Codes. These changes are reflected in §70.1 and §70.90.

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

Mr. Martin has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be more energy efficient buildings resulting in decreased energy costs for the building owners.

There is no anticipated economic effect on licensees, small businesses, or other persons as a result of the proposed rule changes. There is no cost for compliance.

Comments on the proposal may be submitted to Jimmy Martin, Director, Enforcement Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, TX 78711, facsimile (512) 475-2872, or by e-mail: jimmy.martin@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under the Texas Occupations Code, Chapter 51, §51.203 and Texas Revised Civil Statutes, Article 5221f-1, §6. The Department interprets §51.203 as authorizing the Executive Director to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §6 as authorizing the Commissioner to adopt rules as appropriate to implement Texas Revised Civil Statutes, Article 5221f-1.

The statutory provisions affected by the proposed amendments are Texas Occupations Code, Chapter 51 and Texas Revised Civil Statutes, Article 5221f-1. No other statutes, articles, or codes are affected by the proposal.

§70.1. Authority.

These rules are promulgated under the authority of the Texas Industrialized Housing and Buildings Act Texas Civil Statutes, Article 5221f-1 and Texas Occupations Code, Chapter 51 [~~Civil Statutes, Article 9100~~].

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

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components that were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. Any corrections to reports previously filed shall clearly indicate the corrections to be made and the month and date of the report that is being corrected. The report shall contain:

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

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

(3) the name and registration number of the industrialized builder (as assigned by the department), or the installation permit number (as assigned by the department) of the person, to whom the units were sold, consigned, and shipped. The requirements contained in §70.20(2) (relating to Registration of Manufacturers and Industrialized Builders) shall apply when an installation permit is reported in lieu of the registration number of an industrialized builder;

(4) the date the decal or insignia was affixed (physically attached or applied) to the unit [~~address to which the units were shipped~~];

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

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

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

(b) Each industrialized builder shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. These records shall be kept for a minimum of five years from the date of sale, lease, or installation and shall be made available to the department for review upon request. An annual audit of units sold, leased, or installed by the builders shall be

conducted by the Department. The audit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial numbers as assigned by the manufacturer. The builders shall report or provide the following information to the Department for each unit identified in the audit within the timeframe set by the audit:

(1) evidence of compliance with §70.75 of this title (relating to Responsibilities of Registrants-Permit/Owner Information);

(2) the address where each unit was installed. If the builder is not responsible for the installation, then the address to where each unit was delivered;

(3) the occupancy use of each building containing modules or modular components, i.e., classroom, restaurant, bank, equipment shelter, etc; and

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

(A) If the builder is responsible for the installation and site work, then the builder:

(i) shall, for units installed outside the jurisdiction of a municipality, keep a copy of the foundation plans and, for units installed on a permanent foundation, keep a copy of the site inspection report in accordance with §70.73 of this title (relating to Responsibilities of the Registrants-Building Site Inspections). A copy of these documents shall be made available to the department upon request; or

(ii) shall, if installed within the jurisdiction of a municipality, provide the name of the city responsible for the site inspection.

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

(c) The manufacturer's monthly reports must be filed with the department no later than the 10th day of the following month.

§70.61. Responsibilities of the Department - In-plant Inspection.

(a) The TPIA/TPI shall conduct announced or unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance control program. The TPIA/TPI shall conduct inspections in accordance with procedures established by the Texas Industrialized Building Code Council. In order to determine if the compliance control program is working as set forth in the compliance control manual, inspection of every visible aspect of every module shall normally be made at least at one point prior to completion of the structural, plumbing, mechanical, or electrical phase. Inspection of system testing shall be made at least once [~~one~~] every third inspection. Inspection of a substantial portion of the energy compliance design shall be made at least once every third inspection. It is the manufacturer's responsibility to assure that the inspections are accomplished as outlined in this subsection. The department will determine the frequency of modular component inspections.

(b) Inspections at the manufacturing facility shall be increased in frequency as necessary to assure that the manufacturer is performing in accordance with the approved compliance control manual.

(c) The commissioner, at his discretion, may require, or may authorize upon written request by the manufacturer, the use of council approved third party inspectors to perform in-plant inspections. The manufacturer must designate in writing the third party inspection agency that will be performing in-plant inspections. A manufacturer may designate more than one third party inspection agency to perform in-plant inspections. However, once an agency has begun the in-plant inspection on the modules for a project or building, the manufacturer may not change inspection agencies for that project or building. Third party inspection agencies must provide the department a written schedule of inspections a minimum of seven days prior to the inspection. If the inspection must be rescheduled for any reason, the TPIA must immediately inform the department of the schedule change. If an approved third party inspector is utilized, fees may be paid directly to the third party inspector.

(d) The department shall monitor and evaluate the performance of third party inspectors and design review agencies and make performance reports and recommendations to the council as may be necessary.

(e) The manufacturer shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the third party inspection agency.

(f) The TPI shall furnish the manufacturer a copy of the inspection report upon completion of the in-plant inspection. The report must be kept in the manufacturer's file at least five years.

§70.70. Responsibilities of the Registrants - Manufacturer's Design Package.

(a) Review and approval. The manufacturer's design package must be reviewed and approved in accordance with the following.

(1) The manufacturer must select a council approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction documentation, etc. This selection shall be made in writing to the commissioner and will state the name, address, and registration number of the design review agency selected.

(2) An approved DRA shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory construction codes in accordance with the interpretations, instructions, and determinations of the council. The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22 of this title (relating to the Criteria for Approval of Design Review Agencies). The department or DRA will obtain from the manufacturer such information as is necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory codes and the sections in this chapter.

(3) All documents shall have all pages numbered and arranged in accordance with a table of contents. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's name and address.

(4) The DRA will signify approval of a drawing, specification, calculation, or any other document in the manufacturer's design package by applying the council's stamp to each page. An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package. The original council stamp with original signature will be required on these pages. The signature on the original council stamp must be the signature of the manager or chief executive

officer of the DRA. The manager or chief executive officer of the DRA must be registered in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRA's established by the council. The stamp shall not be placed on any designs, plans, or specifications which do not meet the requirements of the applicable mandatory state codes or the requirements of these sections. The manufacturer and the DRA must keep copies of the approved documents. The DRA must keep a copy on file of all approved documents deleted or superseded from a design package for a minimum of five years. The manufacturer must make a copy available to the person performing in-plant inspections. A DRA will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(5) Approvals dated before the effective date of the adoption of the codes in §70.100 of this title (relating to Mandatory State Codes) are not valid for industrialized housing, buildings, modules, and modular components constructed after the effective date of adoption unless steps are taken to transition the approval to the new code editions in accordance with paragraphs B and C of this section. Manufacturers will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document. The manufacturer may make the transition from current code edition to new code edition in any of the following ways.

(A) The approval date on all documents in the manufacturer's design package will be on or after the effective date of adoption of the new edition of the codes in §70.100 of this title (relating to Mandatory State Codes).

(B) The manufacturer may transition approval of documents in his design package any time within the 180 days prior to the effective date of the adoption of the new editions of the codes. The manufacturer must notify the department in writing of the effective date of transition. All documents approved on or after that date shall be to the new editions of the codes. All previously approved supporting documentation, such as compliance control manuals, system calculations, etc., must be resubmitted to the DRA for review and approval to the new code editions and must be approved as of the effective date of transition specified by the manufacturer.

(C) The manufacturer may submit a written description of any other method of transition to the department for approval.

(6) A DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

(7) The DRA shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the DRA.

(8) DRAs or the department acting as a DRA may make red ink corrections to documents provided the corrections meet all of the following criteria:

(A) limited to corrections of minor deviations;

(B) the corrected items can be verified by reference to prescriptive code requirements;

(C) the change does not involve any change of design or require design;

(D) the red ink correction is valid for 10 working days and may not be extended; and

(E) the corrections must be numbered and initialed by the DRA and the statement, "As noted with (number) corrections" shall appear near the stamp of the council with the number of corrections entered.

(b) In-plant documentation. The manufacturer shall provide the DRA in-plant documentation that must, at the minimum, contain the following:

(1) specifications or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain-waste-vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;

(7) mechanical system drawings for all models and options;

(8) fire protection, fire safety, and exit details;

(9) thermal resistance details;

(10) heating, ventilation, and air conditioning details;

(11) structural, thermal, and electrical load calculations;

(12) weather resistance details;

(13) condensation protection details;

(14) decay protection details;

(15) insect and vermin protection details;

(16) fastening schedule;

(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances;

(18) on the floor plan or on the cover or title sheet for each model or project in a title block format:

(A) name and date of applicable codes;

(B) identification of permissible type of gas for appliances;

(C) maximum snow load (roof)(psf);

(D) maximum wind speed (mph) and exposure;

(E) seismic design criteria;

(F) occupancy/use group type;

(G) construction type;

(H) special conditions and/or limitations;

(I) the location of the data plate on the building or dwelling unit; and

(J) the location of the decal or insignia on each module or modular component;

(19) compliance control manual (reference subsection (c) of this section); and

(20) on-site construction documentation (reference subsection (d) of this section).

(c) Compliance control program. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency or the department. The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process. The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

(1) a table of contents;

(2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;

(3) a statement that defines the obligation, responsibility, and authority for the manufacturer's compliance control program;

(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;

(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production line. The area for rejected materials must be clearly indicated to assure that such material is not used;

(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;

(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those that may be performed at one or more stations;

(8) an inspection checklist including:

(A) a list of inspections to be made at each production station; and

(B) accept/reject criteria (each significant dimension and component should be given tolerances);

(C) an energy compliance checklist that enumerates the energy code-compliance features of the module or modules and includes a signature space for the compliance control inspector or manager. A copy of this checklist shall be shipped with the module or modules.

(9) step-by-step test procedures, a description of the station at which each production test is performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article 550-12, gas supply pressure tests, water supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests;

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, application of the decals and insignia, and the reporting procedure;

(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and

(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a minimum, regulated structures must be identified prior to commencing construction.

(d) On-site construction specifications or documentation. All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, e.g., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder for use at the site and provided as required for review and inspection to the agency having local authority. The manufacturer shall provide the design review agency on-site construction documentation which must, at the minimum, contain the following:

(1) foundation system designs for all models in accordance with the applicable mandatory state code;

(2) details for module to module or modular component assembly and connection;

(3) details for connection and attachment of all modules and modular components to the foundation system;

(4) firestopping and draftstopping details;

(5) details for fire exits, balconies, walkways, and other site-built attachments;

(6) exterior weatherproofing details;

(7) details for thermal, condensation, decay, corrosion, and insect protection;

(8) electrical, mechanical, heating, cooling, and plumbing system completion details;

(9) electrical, mechanical, heating, cooling, and plumbing system test procedures;

(10) fire safety provisions; and

(11) specifications and instructions for cooling equipment, and complete information necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if

applicable, and the R values of insulation in the ceiling, walls, and floors.

(e) Unique on-site details. If the typical foundation drawing in the on-site construction documentation is not suitable for a specific site, or if the structure is only partially constructed of modular components, or if the industrialized builder will add unique on-site details, a registered Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and stamp the unique foundation drawings or on-site details and review by a DRA is not needed or required.

(f) Non-site specific buildings. Whenever the manufacturer does not know, at the time of construction, where the building is to be placed, in lieu of providing the site specific construction details or typical site construction details as required in subsection (d) of this section, the manufacturer may provide special conditions and/or limitations on the placement of the building. These special conditions and/or limitations will serve to alert the local building official of items, such as handicapped accessibility and placement of the building on the property, which the local building official may need to verify for conformance to the mandatory state codes. Certain site-related details, such as module to module connections, must still be provided by the manufacturer. It is the responsibility of the DRA to verify that such site-related details are included in the manufacturer's approved design package.

§70.75. Responsibilities of the Registrants - Permit/Owner Information.

(a) The manufacturer shall provide the industrialized builder, or a person who has obtained an installation permit in accordance with §70.20 of this title (relating to Registration of Manufacturers and Industrialized Builders), with the following information:

(1) the name, Texas registration number [~~location~~], and address of the manufacturer of the building;

(2) the location of the decal(s) or insignia on the modules or modular components;

(3) a description of the location of the data plate and explanation of the information thereon;

(4) a set of approved plans as necessary to obtain a building permit; [~~and~~]

(5) the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems for the owner of the building; and[.]

(6) a completed signed copy of the energy compliance checklist (reference subparagraph (c)(8) of §70.70 of this title (relating to Responsibilities of the Registrants-Manufacturer's Design Package)).

(b) The industrialized builder shall provide the purchaser (owner) of any industrialized house or building the following information:

(1) the name, Texas registration number [~~location~~] , and address of the manufacturer and industrialized builder;

(2) a description of the location of the data plate and explanation of the information thereon;

(3) the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems;

(4) the location of the decal(s) or insignia on the module or modular components;

(5) a site plan showing the on-site location of all utilities and utility taps ;[.]

(6) a completed signed copy of the energy compliance checklist (reference paragraph (a)(6) of this section).

(c) The manufacturer must have written proof that the information in subsection (a) of this section was delivered to the industrialized builder or installation permit holder and keep this proof in the manufacturer's files for a minimum of two years.

(d) The builder must have written proof that the information in subsection (b) of this section was delivered to the purchaser (owner) and keep this proof in the industrialized builder's files for a minimum of two years.

§70.90. Sanctions - Administrative Sanctions/Penalties.

If a person violates the Industrialized Housing and Buildings Act, or a rule or order adopted or issued by the Commissioner relating to the Act, the Commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Occupations Code, Chapter 51 [~~Civil Statutes, Article 9100~~], and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203169
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 463-7348

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CHAPTER 79. WEATHER MODIFICATION

16 TAC §§79.10, 79.12, 79.13, 79.17, 79.18, 79.20, 79.21, 79.32, 79.33, 79.42, 79.62

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §§79.10, 79.12, 79.13, 79.17, 79.18, 79.20, 79.21, 79.32, 79.33, 79.42, and 79.62 of the administrative rules regarding the weather modification program.

An informal meeting was held with persons internal and external to the agency representing a number of the weather modification projects where the Department received recommendations to provide clarity to the new Chapter 79, Weather Modification rules, adopted effective December 30, 2001. The Department wishes to thank these persons and organizations who have participated in this rulemaking process.

The proposed amendment to §79.10 adds the definition of "filed" to clarify the date that documents are deemed to have been filed with the Department.

The proposed amendment to §79.12 adds clarifying language pertaining to activities which are exempt from weather modification licensing and permitting processes.

The proposed amendment to §79.13 adds language that would ensure that someone to be licensed to conduct weather modification activities has provided information and other evidence

that is relevant and adequate to allow the Department to evaluate the individual properly.

The proposed amendment to §79.17 deletes language that would obligate the Department to determine wording in a notice of intention to be published in newspapers by the applicant of a hail-suppression permit.

The proposed amendment to §79.18 adds language to clarify that the weather modification permit to be issued is one from the state of Texas.

The proposed amendment to §79.20 adds language to clarify how eligible persons may file a request for a public meeting on a permit application.

The proposed amendment to §79.21 adds language to clarify how an applicant may file a completed application, and notice of intention, in order to receive a weather modification permit.

The proposed amendment to §79.32 clarifies the type of data and information the holder of a permit is required to file with the Department in order to show where cloud-seeding activity took place.

The proposed amendment to §79.33 adds the definition of "filed" to clarify how activity reports are to be provided to the Department.

The proposed amendment to §79.42 adds the definition of "filed" to clarify how data and information is to be furnished to the Department when a revocation of a weather modification license is to be considered.

The proposed amendment to §79.62 adds the definition of "filed" to clarify how the results of elections as reported by county commissions are to be furnished to the Department.

The proposed amendments are necessary to clarify the new rules as required by Senate Bill 1175, Acts of the 77th Legislature and to establish requirements and procedures necessary for the licensing and permitting of weather modification programs in Texas.

George Bomar, Staff Meteorologist, Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no effect on state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Bomar also has determined that for each year of the first five-year period the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be greater consistency in methods used to determine the date(s) of filing documents with the Department which takes into account modern methods of data transmission (such as facsimile and electronic mail).

The anticipated economic effect on small businesses and persons who are required to comply with the sections, as proposed, will be none.

Comments on the proposal may be submitted to George Bomar, Staff Meteorologist, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2871, or by e-mail: george.bomar@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, that authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of this legislation. The statutory provisions affected by the proposal are those set forth in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the sections in which it may be codified, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§79.10. Definitions.

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

(1) Act --The Texas Weather Modification Act, Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified.

(2) Commission--The Texas Commission of Licensing and Regulation.

(3) Commissioner--As used in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, and in these rules, has the same meaning as Executive Director.

(4) Department--The Texas Department of Licensing and Regulation.

(5) Executive Director--As used in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, and in these rules, has the same meaning as Commissioner.

(6) Filed--a document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the postmark date of the document.

(7) [~~(6)~~] Operational area--That area, described by metes and bounds or other specific bounded description, within which it is reasonably necessary to effectuate the purposes of a permitted operation. A part of the operational area may be outside the target area and thus not intended to be affected by the operation.

(8) [~~(7)~~] Target area--The area described by metes and bounds, or other specific bounded description, which is intended to be affected by the operation.

§79.12. License and Permit Exemptions.

(a) Upon receiving written approval of exemption status from the Department in accordance with this section, persons may engage in the following types of weather modification and control activities without obtaining a license or permit.

(1) Laboratory research and experiments.

(2) Activities of an emergency nature for protection against fire, frost, sleet, or fog.

(3) Research, development, and application of weather modification technologies conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations.

(4) Activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

(b) Persons planning to conduct projects meeting the exemption requirements in subsection (a) (1), (3), or (4) of this section must request exemption status from the Department in writing at least 90

days prior to the proposed start of each weather modification project. The request must include the documentation required in §79.18 (3) of this title (relating to Permit Application) and the name and mailing address of the requestor.

(c) The Department will either grant or deny exemption status in writing within 30 days after the request is received.

(d) Persons engaging in weather modification and control activities exempted from licensing and permitting under subsection (a) (1), (3), or (4) of this section must comply with the requirements of §79.31 of this title (relating to Recordkeeping Requirements), §79.32 of this [~~the~~] title (relating to Additional Recordkeeping Requirements for Operations Employing Aircraft), and §79.33 of this title (relating to Reporting Requirements).

§79.13. Application for License.

(a) An application for a license shall be filed with the Department on a form provided or approved by the Department. The application shall include a license fee of $150 and evidence of one of the following:

(1) the applicant possesses a baccalaureate or higher degree in meteorology and at least five months of relevant field experience acceptable to the Department in weather modification;

(2) the applicant possesses a baccalaureate or higher degree in physical science or engineering and at least ten months of relevant field experience acceptable to the Department in weather modification; or

(3) the applicant possesses other training and relevant experience that the Department accepts as indicative of sufficient competence in the field of meteorology to engage in weather modification activities.

(b) If the applicant is an organization, evidence of the possession of the educational and experience qualifications required in subsection (a) of this section by the individual or individuals who will be in control and in charge of the applicant's operations must be included with the application.

(c) The Department may refer the application to the Weather Modification Advisory Committee for advice as to the applicant's qualifications for a license and the Weather Modification Advisory Committee may make recommendations to the Department on the issue of whether the applicant meets the requirements of this section for a license.

§79.17. Notice of Intention to Obtain Permit.

(a) Any person seeking to obtain a Texas weather modification permit shall file with the Department a notice of intention to engage in a weather modification operation.

(b) The applicant shall include the following information in the notice of intention and must submit the notice of intention in the format prescribed by the Department.

(1) A statement that an application for a Texas weather modification permit has been filed with the Department, giving the name and address of the applicant.

(2) The date on which the Department issued the applicant a Texas weather modification license and all dates of renewal, or the date on which the applicant filed an application for a weather modification license with the Department.

(3) The nature and objectives of the proposed operation and the number of years for which a permit is requested.

(4) If applicable, the person or organization, including mailing address and occupation, on whose behalf the operation is to be conducted.

(5) The operational area in which the proposed operation will be conducted, described in sufficient detail to plot the location on a map.

(6) The target area, which is intended to be affected by the proposed operation, described, in sufficient detail to plot the location on a map.

(7) The materials and methods to be used in conducting the proposed operation.

(8) The approximate dates and times during which the proposed operation will be conducted.

(9) A statement that persons interested in the permit application should contact the Department for more information.

(10) A statement summarizing the conditions under which the public may request a public meeting on the application, as set forth in §79.20 of this title (relating to Requests for Public Meeting on Permit Application).

(11) If the application includes hail suppression as an objective, a statement summarizing how the public can petition for an election.

(c) The applicant must submit with the notice of intention the type of supporting data prescribed in §79.18 (3) of this title (relating to Permit Application).

(d) The applicant may not publish the notice of intention until the Department has reviewed and approved the notice of intention in writing.

[~~(e) The Department shall decide whether the notice of intention should include hail suppression as an objective of the proposed operation. The Department may seek the advice of the Weather Modification Advisory Committee.~~]

(e) [~~(f)~~] The Department may disapprove a notice of intention if the applicant fails to provide any of the information required by subsections (b) and (c) of this section or if the Department determines that the notice of intention does not adequately describe the operation. The Department may seek the advice of the Weather Modification Advisory Committee in making this determination.

(f) [~~(g)~~] If the notice of intention is disapproved by the Department, the applicant may appeal to the Executive Director within 10 working days after the applicant receives the Department's written disapproval. The Executive Director shall review the Department's decision and enter an order approving or disapproving the notice of intention.

(g) [~~(h)~~]The applicant must publish the notice of intention as approved at the applicant's expense [~~cost~~] at least once a week for three consecutive weeks in a newspaper of general circulation in each county in which the operation is to be conducted.

(h) [~~(i)~~] The applicant must file proof of publication and publishers' affidavits with the Department within 15 days after the date of the last publication.

§79.18. Permit Application.

An application for a Texas weather modification permit must be filed with the Department and must include the following.

(1) A permit fee of $75.00.

(2) Proof that the applicant holds a valid Texas weather modification license or has a pending application for one.

(3) Supporting data for the application in a form prescribed by the Department, including:

(A) a plan of operation that details the type of weather modification activity proposed,

(B) equipment and personnel involved in the operation,

(C) a description of climate and hazardous weather in the operational area,

(D) the weather modification methodology that will be used, and

(E) a description of the technique that will be used to evaluate the overall effect of the proposed operation.

(4) All contracts, letters of intent, or proposals that pertain to conducting the proposed operation for a client;

(5) An illustration of the operational and target areas that is plotted on a map;

(6) Sufficient information to satisfy the Department that the applicant is able to pay damages for liability which might reasonably arise as a result of the proposed operation, such as a copy of a comprehensive liability insurance policy or a certificate from an insurer guaranteeing coverage for the proposed operation during the proposed term.

(7) A notice of intention.

§79.20. Requests for Public Meeting on Permit Application.

(a) If at least 25 eligible persons make a timely written request, the Department shall hold a public meeting on an application prior to the issuance of a permit.

(b) Those eligible to request a public meeting on an application include all persons who reside or own property within the boundaries of the weather modification operational area, as defined in the application.

(c) A request for a public meeting must include:

(1) the signature, full name, mailing address, phone number, and physical address and county of the residence or property located in the proposed operational area of each person requesting a public meeting; and

(2) a statement that each person requesting a public meeting resides or owns property within the proposed operational area.

(d) To be considered timely, a person's request for a public meeting must be mailed to the Department and post-marked within 30 days after the date of the first publication of the notice of intention in the newspaper, which publishes the latest notice of intention in accordance with §79.17 (g) of this title (relating to Notice of Intention). The Department, for good cause, may extend the time allowed for filing [~~submitting~~] a request for a public meeting.

(e) Upon determining that proper requests for a public meeting from at least 25 persons have been filed [~~submitted~~], the Department will schedule a public meeting within the area where the operation is to be conducted.

(f) Notice stating the time, place, subject, and legal authority of the public meeting shall be provided at least 20 days prior to the public meeting, as follows.

(1) The Department shall give notice by first-class mail to the applicant and to each person who has filed [~~submitted~~] a proper request for a public meeting.

(2) The applicant must publish notice of the public meeting (at the applicant's cost) at least once in a newspaper of general circulation in each county that includes any part of the operational or target areas.

§79.21. Issuance of Permit.

(a) The Department may issue a Texas weather modification permit upon determination of the following:

(1) that the operation proposed in the application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area;

(2) that the applicant:

(A) holds a valid weather modification license;

(B) has filed [~~submitted~~] an administratively complete application in accordance with §79.18 of this title (relating to Permit Application); and

(C) has published a notice of intention as approved by the Department and filed [~~submitted~~] proof of publication as required by §79.17 of this title (relating to Notice of Intention).

(b) The Department shall not issue a permit before the end of the 30-day period immediately following the first publication of the notice of intention. If the notice of intention is required to be published in more than one county and the newspapers publish the notice beginning on different days, the 30-day period begins on the date of the first publication of the notice in the newspaper that publishes the latest notice of intention.

(c) When an election regarding a permit application including hail suppression has been held in accordance with §1.41 (relating to Election for Approval of a Permit that Includes Authorization for Hail Suppression) set forth in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, the Department shall issue Texas weather modification permits in accordance with this section and §79.62 of this title (relating to Issuance of Permit When Election Held).

§79.32. Additional Recordkeeping Requirements for Operations Employing Aircraft.

In addition to the record keeping requirements of §79.31 of this title (relating to Recordkeeping Requirements), any person conducting a weather modification operation with an operational or target area that includes any part of a Texas county and that employs aircraft for reconnaissance or seeding purposes must record and maintain, for each operation, the following:

(1) date;

(2) time period (in minutes of local time);

(3) rates of dispersion of the seeding agent for each flight;

(4) total amount of seeding agent dispensed;

(5) description of each flight track logged in such a manner as to allow a complete and accurate reconstruction of the run and identified at the beginning and ending of each flight by one of the following methods:

(A) radial and distance from a standard reference point,

(B) ground fixes in statute miles from a nearby town or landmark, or

(C) geostationary positioning system (GPS) location.

§79.33. Reporting Requirements.

Any person conducting a weather modification operation with an operational or target area that includes any part of a Texas county must report in writing the following information to the Department according to the schedule given:

(1) any changes or additions to the list filed [~~submitted~~] with the permit application in accordance with §79.18 (3)(b) [~~(8)~~] of this title (relating to Permit Application) must be filed by the fifteenth day of the following month [~~submitted as soon as practicable~~];

(2) for each month in which operations are conducted, one copy of the record of operations for that month required by §79.31 of this title (relating to Recordkeeping Requirements) and, if applicable, one copy of the record of operations for that month required by §79.32 of this title (relating to Additional Recordkeeping Requirements for Operations Employing Aircraft) must be filed by the fifteenth [~~submitted by the fifth~~] day of the following month;

(3) one copy of all other reports required by 15 Code of Federal Regulations, §§908.5-908.7, must be filed no later [~~submitted as soon as practicable, but in no case later~~] than the deadlines set by the federal regulation.

§79.42. Good Cause.

(a) Good cause to believe that a license should be revoked or suspended shall include, but not be limited to, the following:

(1) the licensee has violated any of the provisions of the Act, rules, or license;

(2) the licensee has filed [~~submitted~~] false and/or misleading information on his or her application;

(3) the individual or individuals named in the license no longer possess the qualifications necessary for the issuance of an original license;

(4) the operational personnel or other information which were the basis for the issuance of the license have changed materially; or

(5) the licensee is deemed incompetent to hold a license by virtue of previous violations of weather modification permits or licenses in other states, resulting in suspension or revocation of the licensee's license in that other state.

(b) Good cause to believe that a permit should be revoked or suspended shall include, but not be limited to, the following:

(1) the permittee has violated any of the provisions of the Act, rules, or the permit;

(2) the permittee has filed [~~submitted~~] false or misleading information in either its application for a permit or the records required to be filed [~~submitted~~] by §79.31 of this title (relating to Recordkeeping Requirements) and §79.32 of this title (relating to Additional Recordkeeping Requirements for Operations Employing Aircraft);

(3) the permittee's license has expired during the term of the permit and the licensee has not made a timely request for renewal; or

(4) the Department has reason to believe that the permitted operation is significantly dissipating the clouds and preventing the natural course of developing rain in the area where the operation is conducted to the material detriment of persons or property in that area.

§79.62. Issuance of Permit When Election Held.

(a) If qualified voters in counties or parts of counties included in the target area or operational area petition for and cause an election or elections to be held in accordance with §1.41 (relating to Election for Approval of a Permit that Includes Authorization for Hail Suppression) set forth in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, the Department must evaluate the results of the election or elections, as certified and filed [~~submitted~~] by the respective county commissioners court in accordance with §1.41 (relating to Election for Approval of a Permit that Includes Authorization for Hail Suppression) set forth in Senate Bill 1175, 1st Called Session, 77th Texas Legislature, and the code sections in which it may be codified, before issuing the permit.

(b) If, as a result of the election or elections, certain areas are excluded from the coverage of the permit as applied for, the Department must determine if the proposed operation is still feasible for those areas in which no election was requested and in those areas in which the voters gave their approval. The Department may conduct a public meeting for the sole purpose of determining the feasibility of the proposed operation.

(c) The Department shall not issue the permit if a majority of the qualified voters voting in the election precincts, which are wholly or partially within the target area, vote in opposition to the issuance of the permit.

(d) The Department may issue the permit if a majority of the qualified voters voting in the election precincts that are wholly or partially within the target area vote in favor of the issuance of the permit. However, the permit must exclude any precinct in which the majority of qualified voters voted in opposition to the issuance of the permit if that precinct is wholly within the target area and contiguous with its outer boundary or is wholly or partially within the operational area.

(e) No permit can be issued covering any county or part of a county previously excluded from the coverage of a permit by virtue of an election for at least two years from the date of the election, and then, only if a subsequent election is held at which the majority of voters vote to approve the permit.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203168
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board proposes an amendment to §153.5, Fees. This amendment will

add §153.5(a)(11) to provide for an additional $10 renewal fee for general certified and residential certified appraisers in order to comply with on-line renewal provisions as mandated by SB-187 and SB-645, 77th Legislature, 2001. The additional $10 fee is required of all certified general and certified residential appraisers whether or not they renew on-line.

Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government.

Mr. Liner also has determined that for each year of the first five years this amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a more efficient and convenient renewal of general and residential certifications. There will be no effect on small businesses, other than appraisal businesses that are owned by or employ general certified or residential certified appraisers. The anticipated economic cost to persons who are required to comply with the amendment as proposed is an additional $10 renewal fee for each two-year renewal.

Comments on the proposal may be submitted Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Vernon's Texas Civil Statutes, Article 6573a.2), which provides the board with authority to adopt rules.

Section 5, Powers and Duties of the Board and §14, Certification and License Renewal of the Texas Appraiser Licensing and Certification Act (Vernon's Texas Civil Statutes, Article 6573a.2) may be affected by the proposed amendment.

§153.5. Fees.

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

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

(9) a fee for replacing a lost or destroyed certificate of $15; [~~and~~]

(10) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission; and[~~.~~]

(11) An additional renewal fee of $10 is required of each general certified and residential certified appraiser for establishing and maintaining on-line renewals. On-line renewals are mandated by SB-187 and SB-645, 77th Legislature, 2001, and the additional renewal fee is required whether or not the individual renews on-line.

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

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203172
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 465-3950

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.2, 801.15, 801.19, 801.232, 801.265, and 801.300 concerning the licensure and regulation of marriage and family therapists. Specifically the amendments cover supervision hours, impartiality and nondiscrimination, fees, continuing education sponsors, surrender of license because of student loan default and suspension of a license for failure to be in compliance with child custody orders.

The amendments are pursuant to statutorial changes made to the Texas Occupations Code, Chapter 502, during the 77th Legislative Session. These amendments require that genetic information not be used in the discharge of statutory authority; examination fees will be in accordance with current contracted rate; continuing education sponsors will be required to renew annually, licenses will be surrendered in cases of student loan defaults and a reinstatement fee must be paid, and suspension of license due to noncompliance with child custody orders.

Bobby D. Schmidt, Executive Director, for the board, has determined that for each year of the first five-year period the sections will be in effect, fiscal implications for state government are anticipated to be negligible. Revenues generated from licensing fees will offset the costs and process of administering the program. There will be no fiscal implications for local government.

Mr. Schmidt also has determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to insure the appropriate regulation of marriage and family therapists. There is no anticipated cost to micro or small businesses or persons who are required to comply with the sections as proposed. An increase in cost will affect individuals who default on their student loans, and are required to pay a $40 reinstatement fee and continuing education sponsors who will renew every year instead of every three years. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6657. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

The amendment is proposed under Texas Occupations Code, Chapter 502, which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation of marriage and family therapists.

The amendment affects the Texas Occupations Code, Chapter 502.

§801.2. Definitions.

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

(1) - (10) (No change.)

(11) Group supervision - Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five[~~sixty~~] minutes.

(12) Individual supervision - Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five [~~sixty~~] minutes.

(13) - (31) (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 May 23, 2002.

TRD-200203192
Marvarene Oliver, Ed.D.
Chairman
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER B. THE BOARD

22 TAC §801.15, §801.19

The amendments are proposed under Texas Occupations Code, Chapter 502, which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation of marriage and family therapists.

The amendments affect the Texas Occupations Code, Chapter 502.

§801.15. Impartiality and Nondiscrimination.

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, [~~or~~] sexual orientation, or genetic information.

(b) (No change.)

§801.19. Fees.

(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

(1) (No change.)

(2) licensure examination fee -- shall be in accordance with the current contracted examination fee[~~$195~~];

(3) - (4) (No change.)

(5) late renewal fee -- late renewal fees shall be set as follows:

(A) on or before 90 days - renewal fee plus one-half of the current contracted examination fee [~~-$162.50~~]; and

(B) longer than 90 days but less than one year - renewal fee plus fee equal to the current contracted examination fee [~~-$260~~];

(6) - (9) (No change.)

(10) continuing education sponsor fee -- $50 annually;

(11) child support reinstatement fee -- $40; [~~and~~]

(12) verification fee -- $10; and[~~.~~]

(13) student loan default reinstatement fee -- $40.

(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 May 23, 2002.

TRD-200203193
Marvarene Oliver, Ed.D.
Chairman
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER J. LICENSURE RENEWAL AND INACTIVE STATUS

22 TAC §801.232

The amendment is proposed under Texas Occupations Code, Chapter 502, which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation of marriage and family therapists.

The amendment affects the Texas Occupations Code, Chapter 502.

§801.232. General.

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

(e) A therapist who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(f) A therapist shall pay a reinstatement fee set out in §801.19 of this title (relating to fees) prior to issuance of the license under this subsection.

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

Filed with the Office of the Secretary of State on May 23, 2002.

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Marvarene Oliver, Ed.D.
Chairman
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 458-7236

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §801.265

The amendment is proposed under Texas Occupations Code, Chapter 502, which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation of marriage and family therapists.

The amendment affects the Texas Occupations Code, Chapter 502.

§801.265. Continuing Education Sponsor.

The board is not responsible for approving individual continuing education programs. The board will approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The board will grant [~~a three-year~~] approval to organizations who pay the continuing education sponsor fee which shall permit the organizations to approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the presenter's name to the board. Any university, professional organization, or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed marriage and family therapists.

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

(4) Sponsors shall pay a continuing education sponsor fee which will be effective for one year[~~three years~~] from date of receipt.

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

Filed with the Office of the Secretary of State on May 23, 2002.

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Marvarene Oliver, Ed.D.
Chairman
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 458-7236

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §801.300

The amendment is proposed under Texas Occupations Code, Chapter 502, which provides the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation of marriage and family therapists.

The amendment affects the Texas Occupations Code, Chapter 502.

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney [~~attorney's~~] general's order suspending a license due to failure to pay child support, or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

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

(4) have to pay and be in accordance with child custody.

(b) - (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 May 23, 2002.

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Marvarene Oliver, Ed.D.
Chairman
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SUBCHAPTER G. DENTAL SERVICES

25 TAC §§33.301, 33.306, 33.308, 33.314, 33.316, 33.317

The Texas Department of Health (department) proposes amendments to §§33.301, 33.306, 33.308, 33.314, 33.316, and 33.317, concerning the administration of the Texas Health Steps (THSteps) dental services program. The dental program is a component of the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. The EPSDT program is known in Texas as THSteps. Specifically, the proposed amendments clarify EPSDT dental screening providers' standards of care and documentation requirements.

An amendment to §33.301, Definitions, corrects the subchapter reference to which the rules are applicable.

An additional amendment to §33.301, and the proposed amendments to §§33.306, Allowable Services and Limitations; 33.314, Claims; 33.316, Standards of Care; and 33.317, Management of Complaints, implement House Bill 3507, 77th Legislative Session (2001) which amended Chapter 32, concerning the Texas medical assistance program (Medicaid), of the Human Resources Code. These amendments add a definition for dental necessity in the THSteps dental services program and mandate dental necessity as a condition for provider reimbursement, standards of care and complaint management. These amendments also replace the term "medical necessity" with "dental necessity" throughout the program rules.

The amendment to §33.308 requires providers to document the dental necessity of a stainless steel crown as a condition for a provider's continuing participation in Texas Health Steps and to comply with documentation and record keeping requirements established by the State Board of Dental Examiners.

Gerald Cannaday, Bureau Chief of Support Services, Associateship for Family Health, has determined that for the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing the proposed amendments.

Mr. Cannaday has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing and administering the sections will be to ensure only

necessary dental services are provided and reimbursed. There will be no adverse economic effects on small businesses or microbusinesses because dentists are currently required to ensure and document the dental necessity of their services. These rules provide a definition for dental necessity, as opposed to medical necessity, and reinforce documentation requirements, tying them to specific State Board of Dental Examiner rules on documentation and record keeping. There will be no anticipated economic costs to individuals required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to YuFang Chang, Program Specialist IV, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7323, yufang.chang@tdh.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. A public hearing on these proposed rules will be held on June 13, 2002 at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Room G107, from 2:00-4:00 P.M., Central Daylight Saving Time.

The amendments are proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Human Resources Code, §32.053, which requires certain rules on dental services; the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department, and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Government Code, Chapter 531.

§33.301. Definitions.

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

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

(3) Dental necessity -- for dental services or products provided, whether a prudent dentist would provide the service or product to a patient to diagnose, prevent, or treat orofacial pain, infection, disease, dysfunction, or disfiguration in accordance with generally accepted practices:

(A) of the professional dental community;

(B) within the American Dental Association's Dental Practice Parameters, published by the American Dental Association, Revised 1997; and/or

(C) within the Quality Assurance Criteria of the American Academy of Pediatric Dentistry, as applicable, published in Pediatric Dentistry, Journal of the American Academy of Pediatric Dentistry, Reference Manual, 2000-2001, Volume 22, Number 7.

(4) [~~(3)~~] Department--The Texas Department of Health.

(5) [~~(4)~~] Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)--A component of the Medicaid program, also known as Texas Health Steps (THSteps), which provides medical check-up and dental services to Medicaid and Texas Health Steps clients under age 21 years.

(6) [~~(5)~~] HHSC--Health and Human Services Commission.

(7) [~~(6)~~] Manual--The Texas Medicaid Provider Procedures Manual, including all updates published in the Texas Medicaid Bulletin.

(8) [~~(7)~~] Medicaid--A medical and dental program provided under Title XIX of the federal Social Security Act and the Human Resources Code, Chapter 32.

(9) [~~(8)~~] OIE--The Office of Investigations and Enforcement at the Health and Human Services Commission.

(10) [~~(9)~~] Parental involvement--this term applies only to school health clinics, Head Start programs, and child-care facilities which are exempt from the parental accompaniment requirement under §33.316(c) of this title (relating to Standards of Care). The term means exempt entities shall encourage parental involvement in and management of the health care of children receiving services from the clinic, program, or facility by notifying the child's parent, guardian, or other authorized adult before each visit for an EPSDT dental checkup of the time and place of the child's appointment and encouraging the parent, guardian, or other authorized adult to attend. The parent, guardian, or other authorized adult shall be notified in a timely manner by the means of communication determined by the clinic, program, or facility to be most effective. Such communication must be documented and may include, but is not limited to, one or more of the following options: a home visit from an outreach worker, written or printed correspondence or telephone contact.

(11) [~~(10)~~] Recipient--A Medicaid-enrolled client.

(12) [~~(11)~~] SBDE--State Board of Dental Examiners.

§33.306. Allowable Services and Limitations.

(a) (No change.)

(b) Payment shall be made only for services for which dental necessity is established [~~that are medically necessary, allowable,~~] and delivered in accordance with the Medicaid program requirements in effect on the date of service.

(c) (No change.)

§33.308. Requirements for Provider Enrollment and Continuing Participation.

(a) Dentists providing Texas Health Steps Dental Services must:

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

(3) document the dental necessity of a stainless steel crown before the crown is applied by radiographs or other documentation methods established by the SBDE;

(4) comply with a minimum standard of documentation and record keeping for each of the dentist's patients, pursuant to 22 T.A.C. §§108.7 and 108.8, concerning SBDE minimum standards of care and documentation requirements, whether the patient's costs are paid privately or through the Texas Medicaid program;

(5) [~~(3)~~] practice in the United States of America; and

(6) [~~(4)~~] be enrolled as Texas Health Steps dental providers.

(b) - (d) (No change.)

§33.314. Claims--Time Limits, Submission, and Denial.

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

(d) Claims for services shall be denied for any of the following reasons:

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

(3) the dental necessity of the service was not established [~~was either not medically necessary~~] or the service was not delivered according to the Medicaid program rules and policy in effect on the date of service, or both;

(4) - (8) (No change.)

§33.316. Standards of Care.

(a) (No change.)

(b) Texas Health Steps recipients shall:

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

(3) receive only that treatment required to address documented dental [~~medical~~] necessity and which meets professionally recognized standards of health care as recognized by the SBDE.

(c) (No change.)

§33.317. Management of Complaints.

(a) (No change.)

(b) Referrals to other state agencies.

(1) The department shall refer to OIE based on OIE criteria. OIE criteria for referral by the department include, but are not limited to, complaints or allegations of provider fraud or abuse, including program abuse; abuse or harm to a recipient; lack of dental [~~medical~~] necessity; overbilling; soliciting or collecting unauthorized payments from recipients; or failure to refund payments to recipients. Such complaints or allegations shall be made in writing and forwarded to the OIE. The OIE may utilize staff from the department or its claims processing contractor to assist in determining the validity of any complaints or allegations received. A departmental employee acting as an agent of OIE is governed by the parameters of authority and investigation for OIE.

(2) -(3) (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 May 23, 2002.

TRD-200203203
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.64

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.64, Transfer of Permits.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2912, 77th Legislature, 2001, amended Texas Water Code (TWC), §26.003, by adding the phrase "taking into consideration" before the words "economic development of the state." This proposal amends §305.64 to reflect the change made by HB 2912 to TWC.

SECTION DISCUSSION

The proposed amendment to §305.64(i)(8) adds the phrase "taking into consideration" before the words "economic development of the state" and would modify sentence structure to reflect the concept in TWC, §26.003, which is that economic development of the state should be taken into consideration when actions are taken to maintain the quality of water in the state, rather than the actions should be consistent with economic development.

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 and enforcement of the proposed rule.

The proposed rule is intended to implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be one of several factors taken into consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in fiscal implications for units of state and 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 compliance with legislative requirements to consider economic development when taking actions to maintain the quality of water in the state.

The proposed rule would implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be taken into consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in significant 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 rule, which would implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be taken into consideration when actions are taken to maintain the quality of water in the state. The proposed rule would revise existing commission rules to implement the provisions of HB 2912. The proposed rule is not anticipated to result in fiscal implications for small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 has reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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. 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. The proposed rule does not meet the definition of a major environmental rule because the specific intent of the rule is to clarify commission policy to state that the commission must take into consideration the economic development of the state. The rule substantially advances this purpose by specifically stating that the commission will take into consideration the economic development of the state when maintaining the quality of water in the state. Since the proposed rule states a policy which requires the consideration of the economic development of the state, the proposed rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rule is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the requirement for consideration of the economic development of the state is inserted into policy statements which provide for the protection of the environment and the public health and safety.

In addition, the proposed rule does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the proposed rule does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

The proposed rule does not exceed a standard set by federal law because there are no such corresponding federal standards stating that the commission take into consideration the economic development of the state in maintaining the quality of water in the state. Further, the proposed rule does not exceed an express requirement of state law because it is mandated by state law. The proposed rule does not exceed the requirements of delegation agreements concerning water quality because the delegation agreements do not establish express requirements for taking into consideration the economic development of the state. Finally, this proposed rule is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §26.003 and §26.011. 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 proposed rule in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 applies to the proposed rule and that the rule does not constitute a statutory or constitutional taking.

The specific purpose of the proposed rule is to conform commission policy to HB 2912, §1.26, which changed state policy to provide that the commission take into consideration the economic development of the state in maintaining water quality in the state. Before enactment of HB 2912, §1.26, the state policy on maintaining the quality of water in the state provided that the commission should maintain water quality consistent with the economic development of the state, in TWC, §26.003.

The proposed rule substantially advances the purpose stated previously by changing the policy of the commission to conform to HB 2912, §1.26.

The proposed rule does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation of the proposed rule setting a policy to take into consideration the economic development of the state will not constitute a taking because the proposed rule does not directly apply to the ownership or use of a particular parcel of private real property.

There are no reasonable alternative actions that the commission may take regarding this proposed rule because the policy of the state on this issue has been determined by law through the enactment of HB 2912, §1.26.

Since the proposed rule does not directly apply to the ownership or use of a particular parcel of real property, it does not burden an owner of real property in a manner which would be a statutory or constitutional taking. Specifically, the proposed rule 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 otherwise exist in the absence of 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 rule is not subject to the Texas Coastal Management Program.

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. All comments must be received by 5:00 p.m. on July 8, 2002 and should reference Rule Log Number 2002-045-305-WT. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides 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 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; and §26.011, which provides the commission with the power necessary and convenient to carry out its responsibilities under TWC, Chapter 26.

The proposed amendment implements TWC, §26.003, relating to the policy of the state to maintain water quality.

§305.64. Transfer of Permits.

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

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) - (7) (No change.)

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration [~~and~~] the economic development of the state and/or would minimize the damage to the environment; and

(9) (No change.)

(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.

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203178
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 239-4712

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.1

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §331.1, Purpose, Scope, and Applicability.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2912, 77th Legislature, 2001, amended Texas Water Code (TWC), §27.003, by adding the phrase "taking into consideration" before the words "economic development of the state." This proposed rule would amend §331.1 by replacing the reference to TWC, §27.003 with language reflecting the amended text of §27.003.

SECTION DISCUSSION

The proposed amendment to §331.1 would clarify that economic development of the state would be one of the factors taken into consideration when maintaining the quality of fresh water in the state.

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 and enforcement of the proposed rule.

The proposed rule is intended to implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be one of several factors taken into consideration when actions are taken to maintain the quality of fresh water in the state. The proposed rule would revise existing commission rules to reflect the provisions of HB 2912. The proposed amendment is not anticipated to result in fiscal implications for units of state and 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 rule will be compliance with legislative requirements to consider economic development when taking actions to maintain the quality of fresh water in the state.

The proposed rule is intended to implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be one of several factors taken into consideration when actions are taken to maintain the quality of fresh water in the state. The proposed rule would revise existing commission rules to reflect the provisions of HB 2912. The proposed rule is not anticipated to result in significant 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 rule, which is intended to implement certain provisions of HB 2912, which required the commission to clarify that economic development of the state would be one of several factors taken into consideration when actions are taken to maintain the quality of fresh water in the state. The proposed rule would revise existing commission rules to reflect the provisions of HB 2912. The proposed rule is not anticipated to result in fiscal implications for small and micro- businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 has reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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. 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. The proposed rule does not meet the definition of a

major environmental rule because the specific intent of the rule is to clarify commission policy to state that the commission must take into consideration the economic development of the state. The rule substantially advances this purpose by specifically stating that the commission will take into consideration the economic development of the state when preventing underground injection that may pollute the fresh waters in the state. Since the proposed rule states a policy which requires the consideration of the economic development of the state, the proposed rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rule is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the requirement for consideration of the economic development of the state is inserted into policy statements which provide for the protection of the environment and the public health and safety.

In addition, the proposed rule does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that the proposed rule does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

The proposed rule does not exceed a standard set by federal law because there are no such corresponding federal standards stating that the commission take into consideration the economic development of the state in preventing underground injection that may pollute the fresh waters in the state. Further, the proposed rule does not exceed an express requirement of state law because it is mandated by state law. The proposed rule does not exceed the requirements of a delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for taking into consideration the economic development of the state. Finally, this proposed rule is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §27.003 and §27.019. 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 proposed rule in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 applies to the proposed rule and that the rule does not constitute a statutory or constitutional taking.

The specific purpose of the proposed rule is to conform commission policy to HB 2912, §1.27, which changed state policy to provide that the commission take into consideration the economic development of the state in preventing underground injection that may pollute the waters in the state. Before enactment of HB 2912, §1.27, the state policy provided that the commission should prevent underground injection that may pollute the waters in the state consistent with the economic development of the state, in TWC, §27.003.

The proposed rule substantially advances the purpose stated previously by changing the policy of the commission to conform to HB 2912, §1.27.

The proposed rule does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation of the proposed rule setting a policy to take into consideration the economic development of the state will not constitute a taking because the proposed rule does not directly apply to the ownership or use of a particular parcel of private real property.

There are no reasonable alternative actions that the commission may take regarding this proposed rule because the policy of the state on this issue has been determined by law through the enactment of HB 2912, §1.27.

Since the proposed rule does not directly apply to the ownership or use of a particular parcel of real property, it does not burden an owner of real property in a manner which would be a statutory or constitutional taking. Specifically, the proposed rule 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 otherwise exist in the absence of 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 rule is not subject to the Texas Coastal Management Program.

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. All comments must be received by 5:00 p.m. on July 8, 2002 and should reference Rule Log Number 2002-045-305-WT. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides 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 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; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The proposed amendment implements TWC, §27.003, relating to the policy and purpose of the Injection Well Act.

§331.1. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to implement the provisions of the Injection Well Act, Texas Water Code, Chapter 27, as it applies to the commission. The implementation shall be consistent with the policy of this state to: maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and the operation of existing industries, taking into consideration the economic development of the state; prevent underground injection that may pollute fresh water; and require the use of all reasonable methods to implement this policy. [, ~~consistent with the policy of the Act stated in §27.003.~~]

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

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203177
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 239-4712

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER W. SENATE BILL 1074 VIDEO UNITS

37 TAC §§1.281 - 1.285

The Texas Department of Public Safety (department) proposes new Subchapter W, §§1.281 - 1.285, concerning the provision of funds for video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure. Article 2.137(a) of the Texas Code of Criminal Procedure requires the department to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure. The department will award video units to law enforcement agencies, giving priority to the following, pursuant to Article 2.137(a) of the Texas Code of Criminal Procedure: (1) law enforcement agencies that employ peace officers whose primary duty is traffic law enforcement; (2) smaller jurisdictions; and (3) municipal and county law enforcement agencies. §§1.281- 1.285 are proposed pursuant to the authority in Article 2.137(a) of the Texas Code of Criminal Procedure.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect, there will be fiscal implications for state and local government, or local economies. The additional estimated cost to the state as a result of enforcing or administering the rules is $50,000.00, which amount includes the cost of two Full-Time-Equivalent Positions for fiscal year 2002, one Full-Time-Equivalent Position for fiscal year 2003, and additional administration costs.

The Department anticipates that local governments will incur additional costs in preparing applications for funding, installing the equipment and in complying with program administration requirements. These costs can not be estimated because of the uncertainty relating to the time and expense that each local government will expend on their application, on the installation of the video unit(s) and in complying with program administration requirements. The estimated reduction in costs to local governments expected as a result of enforcing or administering these rules is the amount of the costs the local governments will not have to expend to comply with Articles 2.133 and 2.134 of the Texas Code of Criminal Procedure.

Mr. Haas has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be compliance with Article 2.137(a) of the Texas Code of Criminal Procedure. There is no anticipated adverse economic effect on small businesses or micro-businesses. There is no anticipated cost to individuals. There will be no significant impact on local economies or employment as a result of enforcing or administering these rules.

Comments on the proposal may be submitted to Major Lee Smith, Traffic Law Enforcement Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2110.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Article 2.137(a) of the Texas Code of Criminal Procedure, which requires the department to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure, including specifying criteria to prioritize funding or equipment provided to law enforcement agencies; and Article 2.138 of the Texas Code of Criminal Procedure, which authorizes the department to adopt rules to implement Articles 2.131-2.137 of the Texas Code of Criminal Procedure.

Texas Government Code, §411.004(3), and Articles 2.137(a) and 2.138 of the Texas Code of Criminal Procedure are affected by this proposal.

§1.281. Definitions.

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

(1) Applicant--a Texas law enforcement agency that applies for funding for video units pursuant to Article 2.131, *et seq.* of the Texas Code of Criminal Procedure.

(2) Certificate of installation and use--a certification to the Texas Department of Public Safety, stating that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure, and that the law enforcement agency is using the equipment as required by Article 2.135(a)(1) of the Texas Code of Criminal Procedure. This certification is made by the law enforcement agency, as well as the governing body of the county or municipality served by the law enforcement agency, if any, after receipt of the video unit(s) from the state for the purposes of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure.

(3) Department--the Texas Department of Public Safety.

(4) Law enforcement agency size--the size of the law enforcement agency is determined by the total number of full-time peace officers employed by the law enforcement agency. The four agency-size categories are as follows:

(A) Small agency--a Texas law enforcement agency that employs between one and 24 peace officers on a full-time basis.

(B) Medium agency--a Texas law enforcement agency that employs between 25 and 74 peace officers on a full-time basis.

(C) Intermediate agency--a Texas law enforcement agency that employs between 75 and 299 peace officers on a full-time basis.

(D) Large agency--a Texas law enforcement agency that employs 300 or more peace officers on a full-time basis.

(5) Portable voice tape recorders--a tape recorder that records sound and is capable of being carried or moved.

(6) Video unit--a video camera with transmitter-activated equipment, which is designed to be installed in law enforcement motor vehicles.

(7) Voucher--the letter from the department that awards the video unit(s) to the applicant, states the name of the vendor(s) to whom the applicant must submit the voucher and states the deadline by which the applicant must submit the voucher to the vendor.

§1.282. Criteria for Applicants and the Application.

(a) To qualify for video units, the applicant must be a Texas law enforcement agency and satisfy the definition of a "law enforcement agency" in Article 2.132 of the Texas Code of Criminal Procedure.

(b) To qualify for video units, the applicant's peace officers must satisfy the definition of a "peace officer" in Article 2.12 of the Texas Code of Criminal Procedure.

(c) Applicants must complete the department's official application, which can be found on the department's website at http://www.txdps.state.tx.us. The link for the application and questionnaire is located on the homepage at video camera application.

(d) All applications must be received by the department by the 30th day of August, 2002.

§1.283. Source of Funds for Video Units.

The department will only use the money available pursuant to the following authority to award video units to the successful applicants:

(1) Article III, §50-f, Texas Constitution;

(2) Senate Bill 1, Article IX, page IX-107, §10.87, 77th Legislature, R.S., 2001;

(3) Senate Bill 1, Article V, page V-56, Rider 56, 77th Legislature, R.S., 2001; and

(4) §1232.1115 of the Texas Government Code.

§1.284. Administration and Rules of the Voucher System.

(a) The State Council on Competitive Government will obtain the contract(s) with the vendor(s) to provide the video units. To facilitate the transfer of the video units to the successful applicants, the department will use a voucher system.

(b) The department will send a voucher to the successful applicants, notifying the applicant of the number of video unit(s) awarded to the applicant. The department will only award video units using the voucher system. Applicants shall not use vouchers to replace video units that an applicant already owns at the time the voucher is awarded.

(c) The department will begin sending out vouchers after September 1, 2002.

(d) The department will notify the unsuccessful applicants by letter, pursuant to Article 2.135(a)(2) of the Texas Code of Criminal Procedure.

(e) Upon receipt of the voucher, the applicant must present the voucher to a vendor listed in the voucher to obtain the video unit(s). The vendor will ship the video unit(s) to the applicant.

(f) The applicant must present the voucher to a listed vendor within the timeline listed in the voucher. If an applicant fails to present the voucher to a listed vendor within the timeline listed in the voucher, the voucher will be invalidated.

(g) The applicant must obtain the number of video units listed in the voucher. Although the applicant will have the opportunity to buy upgrades for any video unit(s) they obtain with the voucher, the applicant can not combine multiple video units to obtain upgraded video unit(s). Also, the applicant can not use their voucher to obtain multiple downgraded video units.

(h) Upon receipt of the video unit(s), the applicant must then install the video unit(s) and return the certificate of installation and use to the department, according to Article 2.137(d) of the Texas Code of Criminal Procedure, within 60 calendar days of the applicant's receipt of the video unit(s) from the vendor.

(i) The department does not own and will not own the video units that will be awarded to the successful applicants. Once the applicant redeems the voucher, the applicant will become the owner of the video unit(s). The owner of the video unit(s) will be responsible for contacting the vendor regarding any warranty, defect or recall issues. The owner of the video unit(s) will also be responsible for any other issues regarding the procurement, use or disposal of the video unit(s).

(j) The department will not award vouchers or otherwise provide funding for the following:

(1) Installing the video units;

(2) Purchasing video tapes;

(3) Purchasing portable voice tape recorders; and

(4) Purchasing equipment for motorcycles, bicycles, horse patrols, foot patrols, unmarked patrol vehicles, etc.

(k) Applicants may not assign, sell or otherwise transfer their voucher. If an applicant assigns, sells or otherwise transfers their voucher, the voucher is automatically invalidated.

(l) All awards made by the department are final.

§1.285. Order in Which Vouchers will be Awarded.

The department will award vouchers in the following order:

(1) Applications from small agencies from Police Departments, Sheriffs' Offices and Constables' Offices will be considered first, and voucher(s) will be awarded accordingly.

(2) To the extent there are remaining funds, applications from medium agencies from Police Departments, Sheriffs' Offices and Constables' Offices will be considered second, and voucher(s) will be awarded accordingly.

(3) To the extent there are remaining funds, applications from intermediate agencies from Police Departments, Sheriffs' Offices and Constables' Offices will be considered third, and voucher(s) will be awarded accordingly.

(4) To the extent there are remaining funds, applications from large agencies with a dedicated traffic law enforcement unit from Police Departments, Sheriffs' Offices and Constables' Offices will be considered fourth, and voucher(s) will be awarded accordingly for the dedicated traffic law enforcement patrol vehicles.

(5) To the extent there are any remaining funds, applications from City Marshals that make traffic stops in the routine performance of their official duties will be considered fifth, and voucher(s) will be awarded accordingly.

(6) To the extent there are any remaining funds, applications from Independent School District Police will be considered sixth, and voucher(s) will be awarded accordingly.

(7) To the extent there are any remaining funds, applications from University Police Departments will be considered seventh, and voucher(s) will be awarded accordingly.

(8) To the extent there are any remaining funds, applications from Recreational Patrols will be considered eighth, and voucher(s) will be awarded accordingly.

(9) To the extent there are any remaining funds, applications from District Attorneys will be considered ninth, and voucher(s) will be awarded accordingly.

(10) To the extent there are any remaining funds, applications from Fire Departments/Fire Marshals will be considered tenth, and voucher(s) will be awarded accordingly.

(11) To the extent there are any remaining funds, all other applications will be considered last, and voucher(s) will be awarded accordingly.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203217
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVERS LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.42

The Department of Public Safety proposes amendments to §15.42, concerning the requirement placed on an applicant to provide their Social Security Number (SSN) when applying for a Texas driver license or identification certificate. Applicants who have not applied for, been issued or assigned a social security number will be able to certify this fact in our offices. In doing so, the applicant will no longer be required to obtain a letter of ineligibility (L-676) from the Social Security Administration. This will eliminate multiple visits to our offices when applying for a driver license or identification certificate and eliminate the impact placed on the Social Security Administration field offices required to issue the L-676 form. Utilizing a department form for this certification provides the agency with the best alternatives for identification, investigation and possible enforcement action.

The amendments to this rule are as follows:

Statutory authority to collect an applicant's social security number exists in both federal and state law. It is preferable not to list all specific statutory cites in rule and as such the one reference to the Transportation Code is deleted.

Places in rule that the social security number will only be released to those entities that have specific statutory authority to receive it. It also lists the agencies currently having statutory authority.

Clarifies the documents that will be accepted for the verification of the social security number.

Clarifies that on subsequent renewal or duplicate transactions the applicant will verbally verify the social security number on record. In the event that the number does not match the SSN on record the applicant must provide supporting documentation.

Provides for the department to authenticate the social security number with the Social Security Administration. In the event that the social security number on record cannot be authenticated, the transaction will be denied until authentication takes place. In the event that a license had been previously issued, the applicant will receive a written request to provide additional information. Failure to provide additional information to resolve authentication issues may result in the cancellation of the driver license.

Creates the department's "Social Security Affidavit" to be used in those cases where an applicant has not applied for, been issued or assigned a social security number by the Social Security Administration.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas 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 inform the public of the procedures required of individuals to provide SSN when applying for a driver license or identification card. There is no anticipated adverse economic effect on individuals, small businesses, or micro businesses. The anticipated cost to individuals who are required to comply with this section will be the actual cost of the driver license or identification card.

Comments on the proposal may be submitted to Frank Elder, Assistant Chief, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-2768.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.42. Social Security Number.

(a) The social security number shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. This number will be utilized by the department for the purpose of additional identification and may be disclosed only to those entities that have statutory authority to receive the social security number. This includes the Child Support Division of the Office of the Attorney General - State of Texas, the United States Selective Service Administration, and the Texas Secretary of State. [~~Texas Transportation Code, §521.142(e), provides that the department may require information necessary to determine the applicant's identity, competency, and eligibility.~~]

(b) When a social security number is originally obtained, it is mandatory that documentation be provided to verify the number. Documentation may include: [~~the actual social security card issued by the~~

~~United States government, income tax documents, W-2 tax forms, and payroll or other employer records. A facsimile (flea market) or metal social security card or list of numbers from an employer shall not be used.~~]

(1) Federal issued Social Security Card,

(2) Health Card (if member number represents Social Security Number),

(3) Pilot's license,

(4) Military identification (Active and reserve duty personnel only, not acceptable for dependents),

(5) Peace officer's license - Texas Commission on Law Enforcement Officer Standards and Education,

(6) DD-214,

(7) Medicare/Medicaid Cards,

(8) Certified college/university transcript designating number as SSN, or

(9) Veteran's administration card with social security number preprinted on card.

(c) On all duplicate and renewal driver [~~driver's~~] license applications, the documented social security number shall be obtained where it is not currently a part of the driving record. After the social security number becomes a part of the driver [~~driver's~~] license record, all future duplicate and renewal transactions occurring in a driver license office [~~of driver's license~~] will be verified verbally for the correct social security number. Should the social security number on record not match the number provided, the applicant will be required to provide acceptable documentation as listed above for verification [~~Eligible renewal-by-mail applicants are required to provide a social security number certified by signature that the number provided on the application is true and correct~~].

(d) The department may verify the authenticity of the social security numbers on record through the Social Security Administration. In the event that the social security number on record cannot be authenticated, the department may deny issuance of the renewal, duplicate or original transaction until such time as authentication is made through the Social Security Administration. If the license was previously issued, the department may mail to the address on record a notice requiring the license holder to provide additional documentation. Failure to comply with this request within 30 days may result in the cancellation of the driver license.

(e) [~~(d)~~] Applicants for an identification certificate will be asked to provide verification of SSN documentation. If the applicant fails or refuses to provide that social security information, the identification certificate will be issued without such documentation unless state or federal statute requires otherwise.

(f) Applicants who state they have not applied for, have not been issued or do not have a social security number assigned by the Social Security Administration will be given the department's "Social Security" affidavit for completion. This sworn affidavit will contain:

(1) The applicant's full name, date of birth, and driver license number;

(2) A statement that the applicant has not applied for, been issued or assigned a social security number by the United States Social Security Administration;

(3) A statement of release for verification and investigative purposes;

(4) A notice that failure to provide required information to the department may result in the cancellation of the applicant's driver license or identification certificate per Texas Transportation Code, §521.314; and

(5) A notice that the applicant can be subject to other criminal penalties including Texas Transportation Code, §521.451 and §521.454.

[~~(e) Individuals who do not possess a social security number will be referred to the Social Security Administration to obtain such number.~~]

[~~(1) An individual, ineligible to obtain a social security number due to immigration status, will be required to obtain a letter from the Social Security Administration (SSA L-676) indicating their non-eligibility.~~]

[~~(2) Upon presentation of the Social Security Administration letter demonstrating the applicant's ineligibility to obtain a social security number, the department will assign the applicant an alternate numeric identifier, to be used in lieu of the social security number. Thereafter, the driver's license application will be processed in accordance with existing policies, rules, and procedures.~~]

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203218
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 424-2135

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CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §21.1

The Texas Department of Public Safety proposes an amendment to §21.1, concerning Equipment and Vehicle Standards. Subsection (b)(7) is deleted to comply with an opinion by the Texas Court of Appeals in Corpus Christi that subsection (b)(7) pertaining to pre-1988 vehicles is inconsistent with the legislative mandate set forth in Texas Transportation Code, Chapter 547.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas 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 compliance by the department with a decision of a Court of Appeals of this State. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Inspector Randy McDaniel, Texas Department of Public Safety, Office of Audit and Inspection, P.O. Box 4087, Austin, Texas 78773-0140, (512) 424-2873.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which provides that the department may adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.101 are affected by this proposal.

§21.1. Standards for Vehicle Equipment.

(a) Standards for vehicle equipment.

(1) Definition. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Vehicle equipment means a system, part, or device that is manufactured or sold as original equipment, as replacement equipment, or as an accessory for a vehicle or a device or article of apparel manufactured or sold to protect a driver or passenger of a vehicle.

(2) Standards--federal motor vehicle safety standard. The performance standard for vehicle equipment established by the Texas Department of Public Safety shall be identical to the applicable federal standard.

(A) Lighting device--FMVSS 108:

(i) backup lamp;

(ii) clearance lamp;

(iii) hazard warning lamp, signal, flashers, and switches;

(iv) headlamp--sealed and nonsealed beam and housing;

(v) identification lamp;

(vi) license plate lamp;

(vii) parking lamp (front position lamps);

(viii) reflex reflector;

(ix) replacement lenses;

(x) school bus alternating warning lamp, signal, flashers, and switches;

(xi) side marker lamp;

(xii) stop signal lamp;

(xiii) tail lamp (rear position lamps);

(xiv) turn signal lamp, signal, flashers, and switches;

(xv) triangle warning device--FMVSS 125.

(B) Safety glass and glazing--FMVSS 205.

(C) Seat belts--FMVSS 209.

(3) Standards--Society of Automotive Engineers. The performance standard for vehicle equipment established by the Texas Department of Public Safety in which no federal standard is in effect shall be identical to the applicable standard adopted by the Society of Automotive Engineers (SAE).

(A) Lighting devices (auxiliary)--SAE:

(i) auxiliary low beam (passing lamp)--J582;

(ii) driving lamp--J581;

(iii) fog lamp--J583;

(iv) spot lamp--J591;

(v) high mounted stop and turn signal lamp--J186;

(vi) cornering lamp--J852;

(vii) side turn signal lamp--J914;

(viii) flashing warning lamp for emergency vehicle--J595;

(ix) 360-degree emergency warning lamp--J845.

(B) Special vehicle equipment--SAE:

(i) warning lamp alternating flashers--J1054;

(ii) motorcycle auxiliary front lamps--J1306.

(b) One-way glass and sun screening devices.

(1) One-way (AS-3) glass on motor vehicles. The following regulations establish standards and specifications for the use of one-way glass.

(A) One-way (AS-3) glass is safety glazing which must meet federal motor vehicle safety standards (FMVSS 205 and 128) and American National Standards Institute (ANSI) Z26.1-1977. The luminous reflectance and light transmittance capacity are incorporated into the glazing during the manufacturing process.

(B) Use of one-way (AS-3) glass. AS-3 safety glazing (one-way or privacy) glass is an option available on many new motor vehicles. It may be used anywhere in a bus, van, club wagon, truck, or truck tractor except in the windshield and front (side) windows to the immediate right and left of the driver, and in the rearmost window if such rearmost window is used for driving visibility. If the vehicle is equipped with outside rearview mirrors, then one-way (AS-3) glass may be used in the rearmost window. One-way glass may not be used in any window, interior partition, or aperture created for window purposes in a passenger automobile, station wagon, or taxicab.

(2) Sun screening device definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Sun screening device--A film material or device meeting standards adopted by the department for reducing the effects of the sun.

(B) Light transmission--The ratio of the amount of total light to pass through a product or material to the amount of total light falling on the product or material and the glazing.

(C) Luminous reflectance--The ratio of the amount of total light that is reflected outward by a product or material to the amount of total light falling on the product or material.

(D) Manufacturer means either--

(i) A person who engages in the manufacturing or assembling of a sun screening device; or

(ii) A person who fabricates, laminates, or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.

(E) Multipurpose vehicle--A motor vehicle designed to carry 10 or fewer persons that is constructed either on a truck chassis or with special features for occasional off-road use.

(3) Sun screening devices on motor vehicles.

(A) The following regulations establish standards and specifications for the use of sun screening devices.

(i) The front side wing vents and/or windows to the immediate right and left of the driver may be applied with a sun screening device that has a light transmission of not less than 35% and a luminous reflectance of not more than 35%. Labeling on these windows must be provided as referred to in paragraph (4) of this subsection. Labels on wing vents are not required.

(ii) Side windows which are to the rear of the driver may be applied with a sun screening device in conjunction with glazing (vehicle glass).

(iii) Rear window or windows may be applied with a sun screening device that has a light transmission of not less than 35% and a luminous reflectance of not more than 35% if labeling requirements are met in paragraph (4) of this subsection. Rear windows failing to meet labeling requirement of paragraph (4) of this subsection may be applied with sun screening devices if the motor vehicle is equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle.

(B) This paragraph does not apply to a windshield that has a sun screening device that:

(i) has a light transmission of not less than 33%;

(ii) has a luminous reflectance of not more than 35%;

(iii) is not red or amber in color; and

(iv) does not extend downward beyond the AS-1 line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield.

(4) Manufacturer requirements.

(A) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the following information: manufacturer (name or registration number), and statement--complies with DPS, or 37 Texas Administrative Code (TAC).

(B) Each manufacturer shall include instructions with the product or material for proper installation, including the affixing of the label. At a minimum, one window shall have placed in the left lower corner between the sun screening device and the glass a label legible from the outside of the vehicle.

(C) Each manufacturer shall obtain certification of sun screening devices used on the front side wing vents and windows that certifies to the Texas Department of Public Safety that the product or material he or she manufactures or assembles is in compliance with the reflectivity and transmittance requirements of this section.

(5) Placement of required certificates and use of window covers.

(A) This section does not permit or prohibit the use and placement of federal, state, or local certificates on any window as are required or prohibited by applicable laws.

(B) The use of curtains, blinds, drapes, or stick-on novelty designs in the rear window or windows is not prohibited.

(C) Louvered materials, when installed as designed, shall not reduce the area of driver visibility below 50% as measured on a horizontal plane. When such materials are used in conjunction with the rear window, the measurement shall be made based upon the driver's view from the inside rearview mirror.

(6) On application from a person required for medical reasons to be shielded from the direct rays of the sun, supported by written attestation of that fact from a licensed physician, the Department of Public Safety may issue an exemption from the requirements of this section for a motor vehicle belonging to the person or in which the person is an habitual passenger. Application should be addressed to: Texas Department of Public Safety, Traffic Law Enforcement, P.O. Box 4087, Austin, Texas 78773-0500.

(7) [~~The provisions of this subsection are applicable to motor vehicles if the manufacturer's model year is before 1988.~~]

[~~(8)~~] This section does not apply to:

(A) an adjustable nontransparent sun visor mounted forward of the side windows and not attached to the glass;

(B) a side window that is to the rear of the driver on a multipurpose vehicle; or

(C) a motor vehicle that is not registered in this state.

(D) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes.

(8)[~~(9)~~] Manufacturer's model year of a motor vehicle 1988 and later shall comply with the provisions of Texas Transportation Code, Subchapter 547.001, 547.609, and 547.613, and labeling requirements promulgated in paragraph (4)(B) of this subsection.

(c) Safety guards or flaps.

(1) Safety guards or flaps are required on all trucks, trailers, or semitrailers (in combination with a towing vehicle), if the rearmost axle of the vehicle (or combination) has four tires or more. They are not required on buses, pole trailers, motor homes, or truck tractors.

(2) Safety guards or flaps shall be located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost wheels of such combination to within eight inches of the surface of the roadway.

(3) A tolerance of four inches will be allowed.

(4) Safety guards or flaps shall be at least as wide as the tires they are protecting.

(5) When trailers and semitrailers are operated in combination with a towing vehicle, safety guards or flaps will be required on the rearmost axle of such combination.

(6) Safety guards or flaps shall be of metal, rubber, rubberized material, or other substantial material, capable of remaining in place back of rear wheels by their own weight while the said vehicle is being operated.

(7) The construction of safety guards or flaps will be such that they will remain in proper place back of rear wheels and will be rigid enough to prevent slush, mud, or gravel being transmitted from the vehicle's rear wheels to the windshield of the following vehicle.

(8) Safety guards or flaps should be securely mounted, as wide as the tire that it is protecting, not split or torn to the extent that it is ineffective and the bottom edge of the safety guard or flap shall be no more than 12 inches from the surface of the roadway.

(9) Refer to §23.78 of this title (relating to Instructions and Guidelines) for adopted vehicle inspection Rules and Regulations Manual.

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

Filed with the Office of the Secretary of State on May 23, 2002.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 424-2135

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.1

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.1 concerning the duties of the presiding officer and the policy board. The amendment is proposed to clarify the authority of the presiding officer to delegate administrative matters, as necessary, to the policy board.

Gerald Garrett, Chair of the Board, has determined that, for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a clarification of the presiding officer's and the policy board's position to administer executive decisions.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendment.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §508.035 and §508.036, Government Code, which specify the duties of the presiding officer and the policy board.

There is no cross-reference to the proposed amendment.

§141.1. Presiding Officer (Chair) and Policy Board

(a) The presiding officer (chair) is designated by the governor and serves in that capacity at the pleasure of the governor. The chair [~~presiding officer (chair)~~] acts as spokesperson for the board.

(b) Six members of the board shall serve as the policy board of the Board of Pardons and Paroles. The governor designates the policy board. The term of a member of the policy board is six years, to be served concurrently with the member's term on the board. The chair [~~presiding officer (chair)~~] of the board shall serve as presiding officer of the policy board.

(c) Policy board members shall administer other matters as required by the chair.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203158
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.60, §141.61

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC, Chapter 141, §141.60, §141.61 Subchapter C, concerning the submission and presentation of information and the representation of incarcerated offenders. The amendments are proposed to conform the language of the rules to that of current board practice.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be a clarification of the language in regard to the requirements for submitting and presenting information to the Board on behalf of an offender.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendments.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §508.036, §508.082 and §508.083, Government Code, which vests the board with the authority to promulgate rules relating to the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an offender.

There is no cross-reference to the proposed amendments.

§141.60. Submission and Presentation of Information

(a) Unless otherwise provided, information and arguments for and on behalf of an offender [~~inmate~~] shall be in writing.

(b) Unless otherwise provided, all information and arguments for and on behalf of an offender [~~inmate~~] shall be submitted to the Review and Release Processing Section-TDCJ, Austin, Texas.

(c) In the event that an offender's [~~inmate's~~] case is in the review period, copies of all information and arguments for and on behalf of an offender [~~inmate~~] may be submitted to members of the parole panel designated to consider the case. For this purpose, review period

shall mean a period greater than two months but less than six months prior to the month of the next scheduled review [~~scheduled review date~~].

§141.61. Representation of an Offender [~~Inmate~~]

(a) Persons representing an offender [~~inmate~~] may appear before a member of the board panel designated to consider the offender's [~~inmate's~~] case.

(b) Requests for appearances by persons representing offenders [~~inmates~~] shall be only when the offender's [~~inmate's~~] case is under review, during the review period, and at the discretion of the members of the parole [~~board~~] panel designated to review the case.

(c) The time, place, and manner of contact between a person representing an offender [~~inmate~~] and a member of the board or an employee of the board shall be established by the members of the parole [~~board~~] panel designated to review the case.

(d) For this purpose, the review period shall mean a period greater than two months but less than six months prior to the month of the next scheduled review [~~scheduled review date~~].

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203159
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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CHAPTER 145. PAROLE
SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.12, 145.13, 145.20

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§145.12, 145.13, and 145.20, concerning conditions and rules of parole. The Board proposes amendments to these sections to conform the language of the rules to that of current board practice and to institute a new voting option for the parole process.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result the amendments to this section will be a clarification of the language in regard to the Board's authority to make parole decisions.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendment.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §508.036 and §508.044, Government Code, which authorizes the policy board to adopt rules relating to the decision making processes used by the Board and parole panels and to determine which offenders are to be released to parole or mandatory supervision.

There is no cross-reference to the proposed amendment.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review docket date (Month/Year) may be set at any date in the three year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed;

(3) deny parole and order serve-all, but in no event shall this be utilized if the offender's [~~inmate's~~] minimum expiration date is over three years from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined that the totality of the circumstances favor the offender's [~~inmate's~~] release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed:

(A) FI-1-Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date within the three year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than three months from specified date. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRSAP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(D) FI-4 (Month/Year)--Transfer to Pre-Parole Transfer facility prior to presumptive parole date set by a parole [~~board~~] panel and release to parole supervision on presumptive parole date, but in no event shall the specified date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed;

(E) FI 5--Transfer to In-Prison [~~Inpatient~~] Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI 6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(G) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and

no earlier than nine months from specified date. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(H) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole upon successful completion of the program [~~only after program completion~~] and no earlier than 18 months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program.

§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.

(a) This section applies only to an offender [~~prisoner~~] sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

(1) defer for request and receipt of further information;

(2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender prisoner had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed.

(3) [~~(2)~~] vote CU/NR (Month/Year Cause Number), deny favorable parole action and set for review on a future specific month and year (set-off). The next review docket date (Month/Year) may be set at any date in the three-year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed; or

[~~(3) vote CU/FI (Month/Year Cause Number), designate the date on which the prisoner would have been eligible for release on parole if the offender prisoner had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed.~~]

(4) vote CU/SA (Month/Year-Cause Number): Deny release; an offender is within 24 months of their maximum expiration date. .

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed in accordance with §145.12 of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

§145.20. Parole Certificate.

(a) When the parole plan has been approved, a parole certificate shall be issued and signed with a facsimile signature of the chair. [~~chairman or another member of the Texas Board of Pardons and Paroles.~~].

(b) The parole approval is not effective or final until a formal parole agreement is executed by the offender [~~inmate~~]. The approval may be withdrawn by a parole panel at any time prior to the acceptance and execution by the offender [~~inmate~~] of the formal parole agreement(s) which is contained in the parole certificate.

(c) The parole certificate shall not become effective and in force until the conditions are agreed to, signed, and accepted by the offender [~~inmate~~].

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203160
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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37 TAC §145.15

The Texas Board of Pardons and Paroles proposes 37 TAC §145.15, a new rule concerning extraordinary vote action upon review. The rule is proposed for adoption in order to bring the rules into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed new rule is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be streamlining and clarification of the parole review process for cases which require extraordinary voting practices.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed new rule.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the Board and parole panels.

There is no cross-reference to the proposed new rule.

§145.15. Action Upon Review; Extraordinary Vote.

(a) This section applies to any offender convicted of a capital offense under §21.11(a)(1) or §22.021, Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of

the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) FI-1: Release the offender when eligible; or

(B) FI-18R (Month/Year): Transfer to a TDCJ rehabilitation treatment program. Release to parole upon successful completion of the program and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than two years from the current docket date or the date of the panel decision if the current docket date has passed.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year): Deny release and set the next date for review in 24 months; or

(B) SA: The offender's minimum expiration date is less than 24 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number): A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number): Deny release and set the next date for review 24 months from either the prior docket date or the date of the panel decision if the prior parole docket date has passed; or

(3) CU/SA (Month/Year-Cause Number): Deny release; an offender is within 24 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the mandatory release date, the voting options are the same as those listed in (a) and (b) in this section. Once an offender reaches the mandatory supervision serve all (SA) date, a board panel will consider the offender for release to mandatory supervision using the following options:

(1) RMS: Release to mandatory supervision when TDCJ determines that the prisoner has reached a mandatory supervision date; or

(2) DMS (Month/Year): The next date for mandatory supervision review shall be set one year from either the prior docket date or the date of the panel decision if the prior parole docket date has passed.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS: The board shall vote FI-1 and impose special condition "O"-"The offender shall comply with the terms and conditions of the MRIS program and abide by a TCOMI-approved release plan. At any time this condition is in effect, a releasee shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS.

(B) Deny MRIS: The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17 (a)-(d), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i). If the panel determines that circumstances do not necessitate a special review, no further voting is required.

(2) If the panel grants the offender a special review, the case shall be re-voted by the full board. The chair shall determine which board office will begin the voting. Voting options are the same as those in (a)-(c) of this section.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203166
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.26

(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 Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §145.26 concerning annual report status. The section is proposed for repeal to bring the rules into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined that for the first five-year period the proposed repeal of this rule is in effect,

no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be a clarification of the conditions and rules of parole.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed rule repeal.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this repeal.

The repeal is proposed under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the Board and parole panels.

There is no cross-reference to the proposed repealed rules.

§145.26. Annual Report Status

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203164
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5458

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CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER A. RULES AND CONDITIONS OF MANDATORY SUPERVISION

37 TAC §149.1, §149.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §149.1 and §149.3 concerning the rules and conditions of mandatory supervision and the supervision of Texas offenders in other states. The amendments are proposed to update the language and bring the sections into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendment will be a clarification of the Board's authority under law to make mandatory supervision decisions.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendment.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §508.036, §508.044, §508.147 and Subchapters F and G, Government Code. The board interprets §508.036 and §508.044 as authorizing the policy to adopt reasonable rules relating to the decision-making processes used by the board and parole panels. The board interprets §508.147 as authorizing the parole panels to determine the conditions of release to mandatory supervision. The board interprets Subchapters F and G as relating to the mandatory and discretionary conditions of parole or mandatory supervision.

There is no cross-reference to the proposed amendment.

§149.1. Conditions and Rules of Mandatory Supervision.

Every offender [~~inmate~~] being released on mandatory supervision shall be issued a written statement listing the conditions and rules of mandatory supervision in clear and intelligible language; and, upon release to mandatory supervision, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed. The offender [~~releasee~~] may have additional conditions imposed by a parole panel after release, and shall be notified in writing of any such conditions. Continuance on mandatory supervision is conditioned upon full compliance with all conditions and rules of mandatory supervision as imposed by the parole panel.

§149.3. Texas Mandatory Supervision Offenders [~~Releasees~~] Supervised in Other States.

Texas mandatory supervision offender [~~releasee~~] accepted for supervision in other states under the terms of the Interstate Parole Compact (Texas Code of Criminal Procedure, Article 42.11) shall adhere to the conditions and rules of supervision for Texas and the receiving state. [~~are required to abide by both the sections of mandatory supervision for Texas as set forth in §149.1 of this title (relating to Rules and Conditions of Mandatory Supervision) and the sections of parole of the receiving state.~~]

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203162
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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37 TAC §149.2, §149.5

(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 Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §149.2 and §149.5 concerning restitution and annual report status. These sections are proposed for repeal to bring the rules into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined that for the first five-year period the proposed repeals of these rules is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be a clarification of the conditions and rules of mandatory supervision.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed rule repeal.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this repeal.

The repeal is proposed under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the Board and parole panels.

There is no cross-reference to the proposed repealed rules.

§149.2. Restitution; Monthly Amount; Payment; Alteration.

§149.5. Annual Report Status.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203165
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER B. SELECTION FOR MANDATORY SUPERVISION

37 TAC §149.16

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §149.16 concerning the rules and conditions of mandatory supervision. The amendments are proposed to update the language and bring the section into compliance with current board practice.

Gerald Garrett, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Garrett also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a clarification of the Board's authority under law to make mandatory supervision decisions.

No anticipated economic corollary exists to small businesses or to persons required to comply with the proposed amendment.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th St., Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the Board and parole panels.

There is no cross-reference to the proposed amendment.

§149.16. Mandatory Release Certificate

(a) When a mandatory release plan has been approved, a mandatory release certificate shall be issued and signed with a facsimile signature of the chair [~~chairman or another member of the Board of Pardons and Paroles~~].

(b) The approval of discretionary mandatory supervision may be withdrawn by the parole panel prior to the release of the offender.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203163
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 406-5458

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

The Texas Department of Human Services (DHS) proposes to repeal §30.92, concerning Texas Index for Level of Effort (TILE) Assessments, and new §30.92, concerning Texas Index for Level of Effort (TILE) Assessments, in its Medicaid Hospice Program chapter. The purpose of the repeal and the new section is to update guidelines for Medicaid hospice providers so that they comply with utilization review requirements in 1 TAC §§371.212-371.214, relating to Case Mix Classification System, Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission), and Texas Index for Level of Effort (TILE) Assessments. New §30.92 adopts 1 TAC §§371.212-371.214 by reference.

James R. Hine, Commissioner, has determined that for the first five-year period the proposed new 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 enforcing the section will be that hospice and nursing facility providers will access and utilize the same set of guidelines. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because there is no cost to the provider base. There is no anticipated economic cost to persons who are required to comply with the proposed section. There will be no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-197, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §30.92

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

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 repeal 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 Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§30.92. Texas Index for Level of Effort (TILE) Assessments.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203204
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 7, 2002
For further information, please call: (512) 438-3734

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40 TAC §30.92

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

The new section implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§30.92. Texas Index for Level of Effort (TILE) Assessments.

The Texas Department of Human Services adopts by reference 1 TAC §317.212 (relating to Case Mix Classification System), §317.213 (relating to Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission)), and §317.214 (relating to Texas Index for Level of Effort (TILE) Assessments). Each hospice provider must comply with the Texas Health and Human Services Commission's utilization review requirements found at 1 TAC §§317.212-371.214.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203205
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: July 7, 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 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.10

The Commission on State Emergency Communications has withdrawn from consideration the amendment to §251.10, concerning Regional Plans - Standards, which appeared in the January 25, 2002, issue of the *Texas Register* (27 TexReg 543).

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203228
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: May 24, 2002
For further information, please call: (512) 305-6933

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.4

The Texas State Board of Pharmacy has withdrawn from consideration proposed amendments to §291.1 and §291.4 which appeared in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1970).

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203226
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: May 24, 2002
For further information, please call: (512) 305-8028

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ADOPTED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §10.11

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) adopt the repeal of §10.11 concerning bulk sales. The repeal is adopted in order to rewrite and update this entire section. New §10.11 is being adopted in a separate submission. The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board.

No comments were received on the proposal.

The repeal is adopted under the Texas Agriculture Code, §62.004, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interests and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203175
Dolores Alvarado Hibbs
General Deputy Counsel
Texas Department of Agriculture
Effective date: June 12, 2002
Proposal publication date: April 5, 2002
For further information, please call: (512) 463-4075

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4 TAC §10.11

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) adopt new §10.11, concerning bulk sales. The new section is adopted to update requirement for the sale of bulk seed for certification. The new section will allow sales of Registered and Certified classes of small grains and rice in a form that will benefit farmers with modern planting equipment by allowing for a less cumbersome means of loading modern planting equipment. This will also allow Texas seedsmen to sell the registered class of small grains and rice and the certified class of all crop kinds across state lines and be recognized by other state certification programs. Further, the new section provides for the same fee structure on bulk seed sales as the existing rule, which is the same as that structure used in the sale of other seed under the Texas Seed Law. The department is the certifying agency in the administration of the Seed and Plant Certification Act and is charged with administering and enforcing the standards adopted by the Board.

No comments were received on the proposal

The new section is adopted under the Texas Agriculture Code, §62.004, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interests and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

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

Filed with the Office of the Secretary of State on May 23, 2002

TRD-200203176
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: June 12, 2002
Proposal publication date: April 5, 2002
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.1

The State Securities Board adopts an amendment to §101.1, concerning authority, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2153).

This rule separates the responsibilities of the Agency's Board and the Securities Commissioner.

The amendment implements new §2-4 of the Texas Securities Act requiring the Board to develop and implement policies that clearly separate the policymaking responsibilities of the Board from the management responsibilities of the Securities Commissioner and the employees of the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203207
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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CHAPTER 107. TERMINOLOGY

7 TAC §107.2

The State Securities Board adopts an amendment to §107.2, concerning definitions, without changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10195). A corresponding amendment to §109.13, concerning limited offering exemptions, was concurrently adopted.

The amendment places the defined terms in alphabetical order, conforms terminology to the Texas Securities Act, eliminates duplications, and expands a definition to include email.

The amendment provides for consistent terminology and updates a provision.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203208
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: December 14, 2001
For further information, please call: (512) 305-8300

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CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The State Securities Board adopts an amendment to §109.13, concerning limited offering exemptions without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2154). This amendment coordinates with an amendment to §107.2, which was concurrently adopted.

Definitions are relocated to the specific provisions within the section to which they relate and coordinate with recent changes to the Texas Securities Act, §5.I(b).

The amendment uses terminology consistently; coordinates an exemption more closely with its federal counterpart; and defines terminology associated with the exemption so that it can be more easily located by persons utilizing the exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203209
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.2

The State Securities Board adopts an amendment to §115.2, concerning application requirements, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2156).

A paper filing requirement is removed in light of the recently enacted Uniform Electronic Transactions Act and uniformity is furthered.

The amendment eliminates an unnecessary filing requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203210
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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CHAPTER 131. GUIDELINES FOR CONFIDENTIALITY OF INFORMATION

7 TAC §131.1

The State Securities Board adopts an amendment to §131.1, concerning general provisions relating to confidential information, with a change to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2156). A cross-reference to subsection (a) was added in subsection (b) when the rule was adopted. A related repeal of §131.2 was concurrently adopted.

Two sections are combined and the provisions conform to recent changes to the Texas Securities Act, §28.

The Commissioner can share confidential information with regulatory authorities and associations of governmental or regulatory authorities to assist in the detection and prevention of violations of the law and further administrative, civil, and criminal actions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-28.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 28.B provides that the Board approve governmental and regulatory authorities and associations of governmental and regulatory authorities to which the Commissioner may disclose confidential information at the Commissioner's discretion.

§131.1. Information Sharing.

(a) Pursuant to the authority given to the State Securities Board under the Texas Securities Act, §28, the Board, recognizing the need for cooperative law enforcement among agencies responsible for prevention, detection, and prosecution of white collar crime, for the regulation and policing of persons who offer and sell securities, and for the regulation of offerings of securities, and recognizing the policies underlying §28, authorizes the Securities Commissioner in his or her discretion to supply any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities, or any receiver appointed under the Act, §25-1.

(b) Disclosure for limited purposes. Disclosure of the confidential information referred to in subsection (a) of this section will be made only for the purpose(s) of assisting in the detection or prevention of violations of law or to further administrative, civil, or criminal action.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203211
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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7 TAC §131.2

The State Securities Board adopts the repeal of §131.2, concerning disclosure for limited purposes, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2157). A related amendment to §131.1 was concurrently adopted.

The repeal eliminates provisions that have been moved to another rule.

A duplicate provision was eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons,

and matters within its jurisdiction; and prescribing different requirements for different classes.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203212
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.12

The State Securities Board adopts an amendment to §139.12, concerning oil and gas auction exemption, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2158).

A cross-reference is updated and terminology conformed within.

Persons using the exemption can easily locate other relevant provisions in Texas law and terminology is used consistently.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1, 581-5.T, and 581-12.C. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203213
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 4. ENVIRONMENTAL PROTECTION

SUBCHAPTER D. RAILROAD COMMISSION OF TEXAS VOLUNTARY CLEANUP PROGRAM

16 TAC §§4.401, 4.405, 4.410, 4.415, 4.420, 4.425, 4.430, 4.435, 4.440, 4.445, 4.450

The Railroad Commission of Texas adopts new §§4.401, 4.405, 4.410, 4.415, 4.420, 4.425, 4.430, 4.435, 4.440, 4.445, and 4.450, in new Subchapter D of new Chapter 4, Title 16 of the Texas Administrative Code, relating to the Railroad Commission of Texas Voluntary Cleanup Program, with changes to the versions published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1616). Chapter 4 will be entitled "Environmental Protection."

The purpose of the voluntary cleanup program (VCP) is to provide an incentive to those lenders, developers, owners, and operators who did not cause or contribute to the pollution to remediate soil and water that has been contaminated by activities over which the Commission exercises jurisdiction. The new rules set forth provisions relating to eligibility to participate in the Commission's voluntary cleanup program, application to participate in the program, rejection of an application, entering into a voluntary cleanup agreement, termination of such agreement and cost recovery, voluntary cleanup work plans and reports, certificates of completion, conditional certificates of completion, and persons released from liability.

Senate Bill 310, 77th Legislature (2001), amended Texas Natural Resources Code, Chapter 91, by adding new §§91.651- 91.661 (Subchapter O), specifically authorizing the Commission to establish a voluntary cleanup program. The purpose of new Subchapter O is to provide an incentive for the remediation of property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the property. Neither Subchapter O nor the new rules establish technical cleanup standards. Instead, the voluntary cleanup agreement will list all statutes, rules, and standards with which the participant must comply, including cleanup standards. Once a person has completed a cleanup under this program, the Commission will issue a certificate of completion that will specifically release the person from state liability. Because the statute and the new rules require that participants in the program pay for Commission oversight, there is no net additional cost to the agency for this program. The benefit to the state is that contaminated sites are cleaned up and returned to productive use.

New §4.401 states the purpose of the voluntary cleanup program, and new §4.405 sets forth definitions used in the subchapter. New §4.410 states the eligibility standards for the voluntary cleanup program. The application and acceptance process provides the Commission with a formal means of determining whether or not a site and a party are eligible to enter the program. New §4.415 lists basic information that must be submitted as part of the application that the Commission will use to make this determination and also includes the $1,000 application fee required by Texas Natural Resources Code §91.654.

New §4.420 contains the standards for acceptance or rejection of an application, and provides that if the Commission rejects an application, an applicant may resubmit an application using the process set out in this rule. This rule also contains a method by which the Commission may return half of the application fee for those sites the Commission determines are ineligible. The Commission specifically requested comments on the sufficiency of the list of factors that would be considered in determining whether to accept or reject an application.

If the Commission accepts an application, the eligible applicant and the Commission will negotiate a voluntary cleanup agreement under new §4.425. The rule establishes a process and a schedule by which the Commission and an eligible applicant may either negotiate and execute an agreement or terminate negotiations. The rule also outlines certain elements that the Commission is required by statute to include in any agreement, including reimbursement to the Commission by the participant for reasonable oversight costs incurred by the Commission and a schedule by which these costs will be collected; the statutes, rules, and standards with which the participant must comply; a description of work plans and reports to demonstrate cleanup activities; and a schedule for submission of these documents.

New §4.430 outlines the standards for terminating a voluntary cleanup agreement and for cost recovery by the Commission in that event.

New §4.435 states the standards and procedures for the Commission's review of all work plans and reports. These standards include consideration of future land use, protection of human health and the environment and avoidance of actions that could result in spreading or exacerbating contamination beyond current limits or that may increase the cost of cleanup. The Site Remediation Section may request additional information.

Under new §4.440, the Commission will issue to the participant a certificate of completion granting the release of liability to the state; acknowledging the protection from liability provided by the newly-enacted Texas Natural Resource Code, §91.660; stating the proposed future land use; and including a legal description of the site and the name of the site's surface and mineral owners and mineral operators at the time the application was filed to participate in the program. The Commission specifically requested comments on the proposed definition of "completion" in §4.405 and on the statutory authority, if any, for the Commission issuing conditional certificates of completion. The Commission also specifically requested comments on what circumstances, if any, would be appropriate for a conditional certificate. The Commission included provisions for conditional certificates in §4.440(c).

Persons who caused or contributed to the pollution are not eligible to participate in the program. Only those persons who are not "responsible persons" as defined by Texas Natural Resources Code, §91.113, may be released from liability under this program. This statutory definition of "responsible person" is carried through to new §4.405(13) as "any operator or other person required by law, rules adopted by the Railroad Commission, or a valid order of the Railroad Commission to control or clean up the oil and gas wastes or other substances or materials."

The Commission estimates that it will receive applications for between 12 and 19 sites each year under the program these new rules establish. Texas Natural Resources Code, Chapter 91, Subchapter O, directs the Commission to recover all reasonable costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, utilities, legal, management, and support costs. The Commission is currently developing a methodology by which to routinely recover these costs, and the Commission expects that as it gains experience with the VCP it will be in a position to formalize its VCP cost recovery methods in future amendments to this rule. While the Commission's Oil Field Cleanup Fund will be used as the operating account for the voluntary cleanup program funds, the program is designed to be self-funding. Other than possible use of funds to start up the voluntary cleanup program, which ultimately will be recovered in the form of VCP application fees, funds from the Oil Field Cleanup Fund account targeted towards plugging of abandoned oil and gas wells, remediation of abandoned facilities, and other authorized activities are not expected to be used to operate the voluntary cleanup program.

Discussion of Informal Comments.

During an informal comment period from August 7, 2001, to October 8, 2001, the Commission received informal comments from representatives of the Texas Oil and Gas Association (TXOGA); the Permian Basin Petroleum Association (PBPA); Daniel B. Stephens & Associates, Inc.; and Staff of EPA's Region 6 Brownfields Team (EPA). Commission staff reviewed the informal comments and offered the following responses in the proposal preamble for these rules.

TXOGA recommended that this proposal for creation of a separate chapter for environmental regulations be abandoned (or at least deferred) until such time as the benefit is defined and confusion is eliminated as to how this action will impact existing waste management regulations. A previous staff proposal (which did not proceed to formal rulemaking) for consolidating the Commission's oil and gas environmental rules into a separate chapter of the Texas Administrative Code contained a proposed statement of purpose for the new chapter. According to that statement, the new chapter was to contain information and procedures by which operators demonstrate compliance with environmental regulations of the Commission. It would have set forth standards and procedures (applicable to all new and existing regulations put in that chapter) for: (1) determining whether an actual or potential risk exists at a site; (2) screening contaminants at the site to identify those that pose a risk; (3) developing cleanup standards based on contamination levels that are protective of human and health and the environment; and (4) establishing a reporting mechanism for informing the Commission regarding specific remediation activities. The standards and procedures in that statement are consistent with the statutory authority of the Commission to establish risk assessment as the guide for conducting site investigations and environmental assessments, and for controlling and cleaning up oil and gas wastes and other substances and materials. TXOGA agreed that these standards are appropriate for development of optional risk-based corrective action guidelines for remediation of sites at which cleanup to simple standards defined in permits by rule is not relatively easy and inexpensive. TXOGA stated that there is no reason to believe the legislature ever intended that these standards and procedures should apply to the whole of the Commission's oil and gas environmental regulations. To do so would imply that all waste management and remediation activities must be subject to rigorous analysis to prove that each provision meets each of the above tests.

The Commission did not and does not believe the creation of a new chapter should be abandoned, and pointed out that the only provisions at issue at this time are the provisions in the VCP. As

TXOGA stated, the Commission's previous proposal never proceeded to formal rulemaking. None of the provisions in that effort are part of the proposed VCP rules. The Commission proposed and adopts the VCP rules in Chapter 4 because the VCP rules do not sensibly fit into any other chapter of Commission rules. Commission staff is evaluating the potential benefit to the public and the staff from a reorganization of all oil and gas rules into two general categories of production rules and environmental protection rules, and a new chapter would facilitate such a reorganization. However, that possible reorganization of existing Commission rules was not part of this proposal. The Commission will not adopt any rule or statement of purpose without proper public notice, comment, and vote by the Commission.

Next, TXOGA commented on approval authority for the various aspects of the Voluntary Cleanup Program being specifically delegated in the proposed rules to the "Assistant Director" (defined as the administrative head of the Site Remediation Section). TXOGA did not object to delegation of such authority to this level but stated that definition by rule of the specific level to which authority is delegated removes the ability of the Commission to modify that delegation (e.g., in the event the Site Remediation Section is renamed) without further rulemaking.

The Commission agreed with this comment and noted that the delegation provision in the rule actually defines "Commission" as the Railroad Commission of Texas, the director of the Oil and Gas Division, or a staff delegate of the division director. The Commission worded the rules so that persons who read the rules clearly understand to whom participants will be reporting in the VCP process, so the rules refer to the Site Remediation Section when that section is specifically involved.

For clarification, TXOGA recommended revising §4.405(l) to read: "(1) Applicant--A person who is eligible to participate in the voluntary cleanup program and who *submits* [prepares] the required forms and information for doing so, *together with the application fee required by §4.415(b)(3)*."

The Commission agreed with this comment and proposed the new rule with this wording.

TXOGA questioned the wording in Texas Natural Resources Code and proposed §4.410(a). Texas Natural Resource Code, §91.653(a) states: "Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that may be subject to a Commission order." New §4.410(a) says: "Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that is or may become subject to a Commission order to control or clean up the contaminants."

The Commission noted that the language in the rule intended to make clear that sites actually under Commission order or involved in an active enforcement proceeding do not qualify for the program, which was the Commission's interpretation of the statute. This comment caused the Commission to consider the efficacy of allowing into the program sites under Commission order where the party subject to the order is neither available nor capable of accomplishing the directives of the order, and a third party is willing to perform the cleanup. The Commission stated there may be circumstances where allowing such a third party to participate in the program would benefit the state; however, the Commission believed that Texas Natural Resource Code, §91.653(a), does not authorize the Commission to allow such sites into the program. The Commission invited comment on this issue.

The Permian Basin Petroleum Association (PBPA) stated that the term "Assistant Director" should be replaced with "Railroad Commission" or "Railroad Commissioners."

The Commission noted that the rule defined "Commission" as "the Railroad Commission of Texas, the director of the Oil and Gas Division or a staff delegate of the division director." The Commission worded the rules so that persons who read the rules clearly understand to whom participants will be reporting in the VCP process, so the rules refer to the Assistant Director when the Assistant Director is specifically involved.

Daniel B. Stephens and Associates, Inc. (DBSA) commented that the VCP should allow any person who is not under an enforcement order by any State or Federal agency and has right, title or legal share of the affected property that has been negatively impacted by activities under the jurisdiction of the Texas Railroad Commission to participate in the program.

The rule would not allow participation by any person who caused or contributed to the contamination subject of the voluntary cleanup agreement. Such persons have a legal obligation to clean up a contaminated site, are subject to Commission enforcement, and should not be considered "voluntary" participants. Furthermore, the Legislature established the VCP based on a projection of 12 to 20 sites per year, so the Commission may not have the personnel or resources to accommodate a large influx of sites which could occur if the program were opened up to *any* person who is not under an enforcement order by any state or federal agency and has right, title, or legal share of the affected property. Accordingly, the rules do not allow persons who caused or contributed to the contamination to participate in the VCP.

DBSA recommended that the rules include a Conditional Certification of Completion to create a cooperative atmosphere between the Commission and the regulated community.

The Commission agreed and as proposed, new §4.440(c) included provisions for a Conditional Certificate of Completion.

In addition to the VCP, DBSA recommended that the Commission consider creating an Innocent Owner Program (IOP) at a future date. An IOP would provide liability protection for persons who did not have prior knowledge of negative environmental conditions and did not cause or contribute to contamination on their property. Properties that contain environmental source areas would not be eligible for the IOP.

The Commission determined that issues concerning any IOP program are beyond the scope of its statutory authority and thus should be addressed by the legislature.

DBSA agreed that the VCP agreement should refer to the appropriate statues, rules, and standards necessary for completion of voluntary cleanup. Regarding listed cleanup standards, all agreements should be virtually identical. Alternate cleanup standards should be justified using site- specific information and a full evaluation of human and ecological risk, both on- and off-site. DBSA stated that it may be simpler to include all default cleanup values in the appropriate statues, rules, and standards with equations and models available to calculate site-specific values, instead of detailing cleanup values in the agreement. It also may be problematic to include appropriate cleanup standards exclusively in the agreement. Including cleanup standards in the

agreement requires properties to be fully investigated and completely delineated prior to acceptance into the VCP in order to guarantee that the appropriate values are listed. If additional constituents not identified in the agreement are identified during the course of the investigation, the absence of listed cleanup values may potentially cause inadequate investigation and cleanup.

The Commission anticipates operating the program with sufficient flexibility to address the contingencies pointed out in this comment. For example, a VCP agreement may state that the site will be remediated according to a specific state standards protocol, thereby incorporating into the agreement all of the options available under such protocol.

DBSA suggested some additional definitions for clarity. DBSA suggested that defining "completion" as "the point at which no additional response actions are necessary and all appropriate cleanup standards have been met." DBSA recommended that "conditional completion" be defined as "the point at which the applicant is satisfactorily maintaining remediation systems, engineering controls, post-closure monitoring programs, or institutional controls with the eventual goal of obtaining completion." DBSA proposed to define "Conditional Certificate of Completion" as "an interim certificate that would be followed by a final Certificate of Completion after all cleanup goals stated in the agreement have been met." DBSA suggested that "ineligible applicant" be defined as "an applicant who did cause or contribute to the contaminants on the site subject of the voluntary cleanup agreement and whose application the Site Remediation Section has accepted." DBSA suggested an ineligible applicant is not eligible to receive the liability release in the final certificate, but may obtain the certificate to ensure that future owners and operators are released of liability. DBSA went on to state that in certificates obtained by ineligible applicants, the responsible party must be listed along with the site's surface and mineral owners and mineral operators on the certificate.

The Commission declined to incorporate the suggested definitions into the rule because the provisions in proposed new §4.440 relating to Certificate of Completion and Conditional Certificate of Completion sufficiently addressed the issues raised in the comment. The Commission declined to define the term "ineligible applicant" because persons who caused or contributed to the contamination that is the subject of the VCP agreement may not participate in the program.

DBSA suggested that a conditional certificate of completion would be extremely beneficial for the success of the VCP. Section 4.401 states that the goal of the VCP is to provide an incentive to clean up property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site. Issuance of conditional certificates of completion would stimulate property transactions encouraged by the liability release, while at the same time would require the applicant to continue tasks required to obtain a final certificate of completion. Issuance of such a certificate would be appropriate if (1) no receptors are immediately threatened by contamination originating from the VCP site and; (2) any of the following are used to mitigate exposure of contamination originating from the VCP site to potential receptors including but not limited to remediation systems, engineering controls, post-closure monitoring programs, and/or institutional controls; and (3) a notarized affidavit signed by the applicant or representative of the applicant that details a schedule of post closure monitoring activities and reporting to the Railroad Commission of Texas with an estimated date of completion. The estimated date of completion should not exceed 15 years from the date of the affidavit. If post-closure monitoring is expected to exceed 15 years, then a more active method of contaminant mitigation may be necessary. Once no additional response actions are necessary and all cleanup standards have been met, then a Final Certificate of Completion may be issued.

The Commission agreed that conditional certificates of completion may be appropriate in certain circumstances, and one of the purposes of the VCP is to encourage property transactions; however, the Commission declined to incorporate the specific suggested language concerning conditional certificates of completion into the proposed rule. The provisions in proposed new §4.440, relating to Certificate of Completion and Conditional Certificate of Completion, sufficiently address the issues raised in the comment. The Commission incorporated into proposed new §4.440(c)(7) the suggestion concerning a notarized affidavit signed by the applicant that details a schedule of post closure monitoring activities and reporting to the Railroad Commission of Texas with an estimated date of completion.

DBSA disagreed with the exclusion of responsible persons from participation in the VCP. Section 4.401 states that the purpose of the VCP is to provide an incentive to clean up property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to the contamination released at the site. While responsible persons should not be granted a release from liability, including responsible persons as participants would provide an incentive to clean up contaminated properties still under the financial obligation of responsible persons. Subsequent property owners or operators would benefit from the liability release certificate. Regarding proposed new §4.440(c)(3), DBSA commented that if the responsible party is known, then this party should be listed on the final certificate of completion along with the site's current surface and mineral owners and mineral operators.

The Commission noted that it currently uses an Operator Cleanup Program where persons who caused or contributed to contamination are subject to enforcement and may work with the Commission to achieve remediation. Further, the Legislature established the VCP based on a projection of 12 to 20 sites per year, so the Commission may not have the personnel or resources to accommodate a large influx of sites that could occur if the program were opened up to responsible persons not under an enforcement order by any state or federal agency. Accordingly, the rules do not allow persons who caused or contributed to the contamination to participate in the VCP.

DBSA asked for further explanation as to why the proposed rules do not meet the requirements of Texas Government Code, §2001.0225, or the definition of Texas Government Code, §2001.0225(g)(3).

The Commission determined the rules were not "major environmental rules" as defined by Texas Government Code, §2001.0225(g)(3), because they do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, which is an essential element in the definition of a major environmental rule. Even if this rulemaking were a "major environmental rule," it does not exceed any state or federal standards and would not be adopted under the agency's general rulemaking authority. Accordingly, this rulemaking does not meet the criteria of Texas Government Code, §2001.0225(a).

With respect to proposed new §4.401, DBSA requested clarification to insure that the applicant understands that third-party liability is not removed by earning a VCP Certificate of Completion. An example of a third party could be the Environmental Protection Agency (EPA), unless the Commission has a memorandum of agreement indicating the EPA will honor the liability release granted in Commission VCP certificates.

The Commission stated it would consider this informal comment during the formal comment period. Therefore, the Commission notes that the statute authorizing the VCP, as well as the rule, clearly provide that, upon fulfillment of all the obligations in the VCP agreement, a qualified participate is released from liability to the state. The Commission does not have a memorandum of agreement indicating that the EPA will honor the liability release granted in Commission VCP certificates, but believes such an understanding would be appropriate for those sites, if any, where EPA has jurisdiction under federal law, and the Commission anticipates that as its VCP matures, other agencies will be more willing to acknowledge participants' cleanup efforts. The Commission has made no change to this adopted rule language at this time.

Regarding new §4.410, DBSA questioned subsection (b)(2)(A)(i) which states that the applicant must provide general information concerning the applicant's financial ability to perform the voluntary cleanup. DBSA asked whether, since responsible persons cannot be included as applicants, an eligible applicant may include responsible persons as the entity financially responsible for cleanup activities on the property.

This comment raised the following question: Would the Commission disqualify an applicant whose application indicates that a responsible person is one of the applicant's sources of financial capability to perform the remediation? The answer to this question is no. The Commission will assure that the applicant has the financial ability to carry out the entire voluntary cleanup, and is not concerned about the source of the applicant's funding. Note, however, that the focus is on the applicant. The applicant is required to have the funding as a qualification for approval to participate. The Commission will not approve an application unless the applicant has sufficient financial resources to carry out the project that is subject of the application. Further note that a responsible person who funds an applicant's voluntary cleanup will not immunize itself from obligations imposed on "responsible persons."

DBSA recommended that §4.415(c)(3)(C) include the wording "relevant information concerning the potential for human and ecological exposure to contamination at the site."

The Commission agreed that a wording change was needed for clarity, but did not use DBSA's suggested language. The Commission's proposed §4.415(c)(3)(C) read, "relevant information concerning exposure to contamination at the site by all potential receptors as indicated by site specific considerations."

DBSA stated that in §4.420, the section should include wording that indicates that the identified contaminating activity or environmental contamination must be one that is regulated under the jurisdiction of the Texas Railroad Commission and not other state or federal programs.

The Commission addressed this concern in new §4.401, which states, "The purpose of the voluntary cleanup program is to provide an incentive to clean up property contaminated by activities under Railroad Commission jurisdiction by removing the liability . . ."

DBSA recommended that §4.420(a)(6) be reworded to state "provided information does not indicate that the person or the site is ineligible."

The Commission agreed with this comment and the proposed rule reflected the change by adding the suggested phrase to §4.420(a)(3), moving what was (a)(7) to (a)(6), and deleting (a)(7) as these paragraphs were written in the draft rules considered in the informal comment period. DBSA observed that some verbiage in proposed new §4.425 conflicts with the information conveyed in the preamble. DBSA recommended that §4.425(a) should include the wording, "Before the Site Remediation Section evaluates any plan or report detailing cleanup goals and proposed response action methods, the applicant shall enter into a voluntary cleanup agreement with the Commission that sets forth the *default cleanup values* terms and conditions of the evaluation of the reports, *including proposed alternative cleanup values*, and the implementation of work plans."

The Commission pointed out that the concerns raised in this comment were addressed in §4.425(b)(7), regarding technical standards.

DBSA requested that proposed new §4.425(c)(2) include negotiation time limits.

The Commission expected the parties to establish negotiation time frames in the VCP agreements, so that a failure to meet schedules will subject participants to the same consequences as failure to abide by the terms of the agreement.

DBSA suggested that new §4.440 include additional text that defines which entity determines when response actions are no longer necessary and specifies that final certificates will be issued only upon attainment of appropriate cleanup standards.

The Commission agreed that the rule should clearly state that the Commission will determine when response actions are no longer necessary; however the Commission contemplated the possibility that a final certificate, with reopeners, could be issued before attainment of appropriate cleanup standards when the participant employs certain engineering or institutional controls.

Regarding §4.440(c)(3), DBSA commented that if the responsible person is known, then this person should be listed on the final certificate of completion along with the site's current surface and mineral owners and mineral operators.

The Commission's primary purpose in creating the VCP was to facilitate site remediation. The phrase "if the responsible party is known" involves legal issues beyond the intended purpose of the program. The Commission therefore declined to incorporate this suggestion into the proposed rule.

The Environmental Protection Agency (EPA) commented that the cleanup selected for some VCP sites may result in controls (*e.g.*, caps) to assure protectiveness. Conditional certificates or use of reopeners would be appropriate in these situations.

The Commission agreed that reopeners are appropriate for all remediations that include use of post-closure care, engineering, and institutional controls. The rules included a definition of and provisions for conditional certificates of completion, which the Commission anticipated would be appropriate for long-term remediations that involve more active care and reporting, such as pump-and-treat groundwater cleanups. Sites at which passive

engineering controls or land use restrictions are used may be eligible for a final certificate with reopener to cover contingencies such as control failure or a change in land use.

In general, the Commission contemplated three types of closures: (1) the remediation work is complete, the site is closed to protective levels for all constituents in all pathways for all property uses, all requirements of the VCP agreement have been met, and the final certificate of completion is issued with standard health and safety reopeners; (2) the remediation work is complete, but control maintenance is required so that receptors are and will remain protected, and a certificate is issued with more site-specific reopeners; and (3) a reliable long-term remediation system is in place for which a conditional certificate, requiring continued maintenance and success of the long-term system, would be issued, so that receptors are and will remain protected. The Commission contemplated that there would be cases where certificates described in scenarios (2) and (3) may, over time, be replaced by the type of certificate described in scenario (1) once a site meets the standards for which the Commission issues a type (1) certificate. There also may be times when conditions made part of certificates described in scenarios (2) and (3) may fail, triggering a requirement that the participant revisit relevant remediation issues at the site.

The EPA commended the Commission for requiring that certificates include the proposed future land use as in §4.440(c)(2). EPA suggested also that reopeners could be included in certificates issued for site cleanups to non-residential standards.

The Commission intended that certificates issued for site cleanups to non-residential standards shall be conditioned on maintaining the land use for which the certificate was issued. Certificates of completion for such sites will include reopeners or conditions requiring the land use to be maintained.

The EPA suggested that the recordation of certificates in public records would inform future land owners and the community of the VCP cleanup and ensure the integrity of the institutional controls.

The Commission stated that a primary purpose of the VCP is to return unmarketable land to productive use. Where institutional controls are used to ensure protectiveness, the voluntary cleanup agreement shall provide for the use of such controls, which may include recordation of the certificate of completion, deed restrictions, or reliance on city ordinances or other laws relating to restrictions in property use.

The EPA commented that the meaning of the term "completion" in §4.440(a) of the draft considered during the informal comment period is an important VCP definition and suggested that the description be included in §4.405 as a definition.

The Commission agreed with this comment and proposed new §4.405 included the definition of "completion."

The EPA also suggested that the definition of "completion" ("that no more response actions are necessary") should indicate that closure is contingent on maintenance of planned land use and any other post-certificate controls required for the selected cleanup.

As proposed, the Commission's new rules included a definition of and provisions for conditional certificates of completion, which the Commission anticipated would be appropriate for long-term remediations that involve more active care and reporting, such as pump-and-treat groundwater cleanups. Sites at which passive engineering controls or land use restrictions are used may be eligible for a final certificate with reopener to cover contingencies such as control failure or a change in land use. The definition of "completion" in proposed new §4.405 indicated that closure is contingent on maintenance of planned land use and any other post-certificate controls required for the selected cleanup.

The EPA observed that prospective participants might benefit from a preamble discussion of any interaction, division of responsibilities, and relationship of the Railroad Commission VCP and the Texas Natural Resources Conservation Commission (TNRCC) VCP.

The Commission's VCP may include only sites contaminated by activities over which the Commission exercises jurisdiction, as outlined in Texas Natural Resources Code, §91.101. For sites contaminated by activities over which both the Commission and the TNRCC have jurisdiction, the Commission will operate consistent with the principles stated in its Memorandum of Understanding with TNRCC, found in 16 Texas Administrative Code, §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Natural Resources Conservation Commission (TNRCC).

The EPA commented that the draft rules were not clear as to whether the VCP will provide an opportunity for community involvement.

As proposed, new §4.450(b)(2)(D) stated that if the applicant is not the surface owner of the site, the applicant must provide written authorization from all surface owners of the site agreeing to the applicant's participation in the program. The Commission noted that involvement of parties such as surface owners and adjoining landowners will be a necessary component of delineation of the full nature and extent of contamination subject of the voluntary cleanup. Participants in the program will need permission for access to properties included in the delineation and will need to involve surface owners with any land use restrictions that may be part of remediations.

The EPA suggested that a description of the Commission's oversight role (both during cleanup and post-certificate) would help to support and encourage the VCP. The information would reduce potential customers' anxiety and increase citizens' confidence.

The Commission found from a review of the proposed new rules that the Commission's oversight role was clearly described.

In reference to the new provision stating that the Commission will process applications in the order in which they are received, the EPA pointed out that some of the VCP sites may be related to development projects and, given the time pressures normally associated with development projects and the desire to encourage the cleanup and revitalization of these contaminated sites, the Commission might consider including a provision allowing sites involved in development projects to be prioritized or perhaps put on an expedited the Commission review schedule.

The Commission found that new §4.420 clearly gives the Commission 45 days to reject an application, which means all applications should be processed within 45 days. The Commission was not inclined to change either this provision or the provision that applications will be processed in the order received because these provisions provide sufficient certainty to applicants and maintain order and efficiency for Commission staff. The Commission noted that the Voluntary Cleanup Agreement may include deadlines that further the goals of developments under a time crunch. The Commission also noted that it has discretion as to the enforcement of its rules which allow staff to accommodate

the rare true emergency, such as the discovery of previously unknown contamination during the course of a project.

EPA observed that the preamble to the draft rules stated that the rules do not establish technical cleanup standards; rather, the voluntary cleanup agreement between the Commission and the participant will include site-specific cleanup standards. Including general guidance or rules about VCP cleanup standards and remediation planning strategies would support and encourage the program by providing potential customers valuable information and would increase citizens confidence in the VCP. Guidance on Commission expectation for assessments, work plans, and reports would be useful.

The Commission intends to evaluate developing such guidance based on experience as its VCP program matures, and will include some of these issues in future rulemakings.

The EPA sought clarity whether the release provided by the certificate applies to future owners not listed on the certificate as participants and whether the certificate is transferable.

The Commission intends for the release provided by the certificate to apply to future owners not listed on the certificate as participants and to be transferable in order to facilitate property transactions and redevelopment.

The EPA recommended that one of the final report requirements should be confirmatory analytical sample results, when appropriate.

The Commission agreed with this comment, anticipating that its VCP agreements would include a requirement for final confirmatory analytical sample results, when appropriate.

The EPA commended the Commission for not limiting VCP participation to prospective purchasers.

The Commission did not and does not intend to limit VCP participation to prospective purchasers, but reminded the reader that the proposed new rules would not allow persons who caused or contributed to the contamination to participate in the VCP.

Formal Comments and Commission Responses.

After the proposed rules were published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1616), the Commission received one late-filed comment, which was from TXOGA.

TXOGA reiterated its comment from the informal comment period regarding the wording in Texas Natural Resources Code, §91.653(a), and the Commission's proposed wording for §4.110(a). The Commission had already addressed this issue in the discussion of the informal comments in the proposal preamble, and specifically requested comments with regard to circumstances where allowing a third party to participate in the program would benefit the state, even though the Commission did not believe §91.653(a) authorized the Commission to allow such sites into the program.

Because of TXOGA's comment, the Commission has reconsidered this issue, and has come to the conclusion that the statute does not exclude sites from eligibility for voluntary clean up simply because there is the possibility the site could become subject to an order. Such an interpretation *prevents* virtually every site from being eligible for the program, thus rendering meaningless the stated purpose of the program. The Commission therefore concludes that the statute is intended to exclude sites which at the time of the application are subject of an actual Commission pollution cleanup order, the execution of which accomplishes the same result as the voluntary cleanup. The Commission therefore adopts clarifying changes to §4.410(a) to make it clear that sites are excluded only if they are subject of a Commission order to control or clean up pollution at the time of the application, and providing that the site could come into the program if the order were dismissed. These provisions assure that sites which would benefit from being in the program are not left behind.

In addition, former operators of a facility may have difficulty qualifying for the program because of a potential nexus between their activity and the contamination, and the presence of contamination from unknown sources may cause such operators or others associated with oil field activity on the site to be disqualified as well. The Commission anticipates that, as it develops a history with the program, it will evaluate the efficacy of this paradigm and adjust, if necessary, to maximize clean-ups in the program.

TXOGA also commented on proposed §4.440(c) and stated that the issuance of a Conditional Certificate of Completion "while not a specific requirement of §91.656 of the Texas Natural Resources Code - is certainly within the Commission's discretion and provides a means of designating a significant milestone in a cleanup effort." TXOGA supported adoption of this provision.

In addition to its earlier findings, the Commission finds that the public benefits resulting from the new rules include reduction of the number of sites to be remediated with money from the Oil Field Cleanup Fund; additional protection of human health and the environment; faster cleanup of sites; productive use of formerly contaminated properties; and possible restoration of property values that may have been depressed due to environmental damage.

The Commission also finds that small businesses, micro-businesses, or individuals who are members of the regulated community will not see any mandatory increased costs because the program established under the new rules is voluntary. The rules are consistent with the Commission's response to spills and releases, and create only an additional incentive to encourage cleanup.

The Commission adopts the new rules under the provisions of Section 34, Senate Bill 310, 77th Legislature (2001), which enacts new Texas Natural Resources Code, §§91.651-91.661, authorizing the Commission to establish a voluntary cleanup program according to the standards set forth in those new sections; Texas Natural Resources Code, §91.113, which governs the investigation, assessment, or cleanup by Commission of oil and gas wastes or other substances or materials regulated by the Commission under Texas Natural Resources Code, §91.101; and Texas Water Code, §26.131, which makes the Commission solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources and any other activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101.

Texas Natural Resources Code, §91.113, and §§91.651- 91.661, as enacted by Senate Bill 310, 77th Legislature (2001), and Texas Water Code, §26.131, are affected by the adopted new rules.

Issued in Austin, Texas, on May 21, 2002.

§4.401. Purpose.

The purpose of the voluntary cleanup program is to provide an incentive to clean up property contaminated by activities under Railroad Commission jurisdiction by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site. The program is restricted to voluntary actions but does not replace other voluntary actions.

§4.405. Definitions.

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

(1) Applicant--A person who is eligible to participate in the voluntary cleanup program and who submits the required forms, information, and fee for doing so.

(2) Assistant director--The administrative head of the Site Remediation Section.

(3) Certificate of completion--The document executed by the Commission upon satisfactory completion of obligations under a Voluntary Cleanup Agreement.

(4) Completion--The cleanup of a site to the point that no more response actions are necessary.

(5) Commission--The Railroad Commission of Texas, the director of the Oil and Gas Division, or a staff delegate of the division director.

(6) Conditional certificate of completion--The document executed by the Commission upon a participant's satisfactory conditional completion of obligations under a Voluntary Cleanup Agreement.

(7) Conditional completion--The cleanup of a site to the point that further response actions are limited to maintenance of engineering or institutional controls and/or the continued successful operation of long-term remediation systems.

(8) Contaminant--A waste, pollutant, or other substance or material regulated by or that results from an activity under the jurisdiction of the Commission under Texas Natural Resources Code, Chapters 91 or 141, or the Texas Water Code.

(9) Division--The Oil and Gas Division of the Commission.

(10) Eligible applicant--An applicant who did not cause or contribute to the contaminants on the site that is the subject of the voluntary cleanup agreement and whose application the Site Remediation Section has accepted.

(11) Participant--An eligible applicant with whom the Commission has entered into a voluntary cleanup agreement.

(12) Response action--The control, cleanup, or removal of a contaminant from the environment.

(13) Responsible person--Any operator or other person required by law, rules of the Commission, or a valid order of the Commission to control or clean up the oil and gas wastes or other substances or materials.

(14) Site Remediation Section--Those Commission staff, individually or collectively, who are employed in the Site Remediation Section, or its successor, of the Oil and Gas Division.

(15) Voluntary cleanup--A response action taken under and in compliance with this subchapter.

§4.410. Eligibility for the Voluntary Cleanup Program.

(a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that is the subject of a Commission order to control or clean up the contaminants. On application from an eligible applicant, the Commission may dismiss an order that would otherwise render a site or portion of a site ineligible for the program.

(b) Any person who is not a responsible person as that term is defined in §4.405(13) of this title (relating to Definitions) is eligible to participate in the voluntary cleanup program.

§4.415. Application to Participate in the Voluntary Cleanup Program.

(a) A person applying to participate in the voluntary cleanup program shall submit to the Site Remediation Section an application to participate in the voluntary cleanup program and an application fee as required by subsection (b) of this section.

(b) A person submitting an application to participate in the voluntary cleanup program shall:

(1) use the application form provided by the Commission;

(2) provide the following information:

(A) general information concerning:

(i) the applicant and the applicant's capability, including the applicant's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) the names, addresses, and telephone numbers of all surface and mineral owners and mineral operators of property where the contamination came to be located;

(B) other background information requested by the Site Remediation Section based on the particular circumstances of the site in question;

(C) an environmental assessment of the actual or threatened release of the contaminant or contaminants at the site that includes, at a minimum, the information set forth in subsection (c) of this section; and

(D) if the applicant is not the surface owner of the site, written authorization from all surface owners of the site agreeing to the applicant's participation in the program;

(3) submit the application fee of $1,000; and

(4) follow any schedule set by the Site Remediation Section.

(c) The environmental assessment required by subsection (b)(2)(C) of this section shall include, at a minimum:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site; and

(3) to the extent known by the applicant:

(A) the operational history of the site;

(B) information concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, and wherever the contamination came to be located; and

(C) relevant information concerning the potential for human exposure to contamination at the site.

§4.420. Acceptance or Rejection of an Application.

(a) The Site Remediation Section shall process applications in the order in which they are received.

(b) The Commission may accept an application if it:

(1) is submitted by a person eligible to participate in the program, pursuant to §4.410(b) of this title (relating to Eligibility for the Voluntary Cleanup Program);

(2) pertains to an eligible site, pursuant to §4.410(a) of this title (relating to Eligibility for the Voluntary Cleanup Program);

(3) includes all of the information required by §4.415 of this title (relating to Application to Participate in the Voluntary Cleanup Program), provided the information does not indicate that either the person or the site is ineligible;

(4) demonstrates that the applicant has the financial capability to pay for all costs of the response action, including but not limited to the direct costs of the response action and the reasonable costs attributable to the oversight of the response action likely to be incurred by the Commission;

(5) includes written authorization from all surface owners of the site agreeing to the applicant's participation in the program, or proof that the applicant is the surface owner of the site; and

(6) includes the application fee.

(c) The Commission may reject an application to participate in the voluntary cleanup program if:

(1) a state or federal enforcement action is pending that concerns the remediation of the contaminant or contaminants described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is incomplete or inaccurate; or

(4) the application fails to meet the requirements of subsection (b) of this section.

(d) If the Commission rejects the application, the Commission shall:

(1) not later than the 45th day after the Site Remediation Section receives the application, notify the applicant in writing that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the applicant that the Commission will refund half the application fee unless the applicant indicates a desire to resubmit the application.

(e) If the Commission rejects an application because it is incomplete or inaccurate, then not later than the 45th day after the Site Remediation Section receives the application, the Assistant Director shall notify the applicant in writing of all information needed to make the application complete or accurate. If the applicant resubmits the application not later than the 45th day after the Assistant Director issues notice that the application has been rejected, the applicant shall not submit an additional application fee. This waiver of the application fee applies only to the first re-submission within 45 days of notice of an incomplete application. An applicant who re-submits an application after the 45th day shall submit the application fee required by §4.415(b)(3) of this title, relating to Application to Participate in the Voluntary Cleanup Program.

§4.425. Voluntary Cleanup Agreement.

(a) Before the Site Remediation Section evaluates any plan or report detailing the cleanup goals and proposed response action methods, the eligible applicant shall enter into a voluntary cleanup agreement with the Commission that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement shall:

(1) include provisions by which the participant commits to pay the Commission all reasonable costs:

(A) incurred by the Commission for review and oversight of the participant's work plan and reports and for the Commission's field activities;

(B) attributable to the voluntary cleanup agreement including direct and indirect costs of overhead, salaries, equipment, utilities, and legal, management, and support costs; and

(C) that exceed the amount of the application fee submitted to the Commission by the applicant as required by §4.415 of this title (relating to Application to Participate in the Voluntary Cleanup Program);

(2) identify all statutes and rules with which the participant shall comply;

(3) identify all state and federal standards, requirements, criteria, or limitations to which the response action would otherwise be subject if a state or federal permit were required;

(4) describe any work plan or report that the participant is required to submit for review by the Commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(5) include a schedule for the participant to submit and for the Site Remediation Section to review the information required by paragraph (4) of this subsection;

(6) identify specific tasks, deliverables, and schedules for conducting and completing the response action, including terms specifying negotiating periods between reports and consequences for failure to meet deadlines in the agreement;

(7) state the technical standards to be applied by the Site Remediation Section in evaluating the work plans and reports with reference to the proposed future land use to be achieved; and

(8) be signed by both the participant or the participant's authorized representative and the Assistant Director.

(c) If the eligible applicant and the Commission do not reach an agreement on or before the 30th day after good faith negotiations have begun:

(1) either the eligible applicant or the Commission may withdraw from the negotiations, in which event the Commission shall retain the application fee; or

(2) the eligible applicant and the Commission may continue negotiating.

(d) The Commission shall not initiate an enforcement action against a participant who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release that is the subject of a voluntary cleanup agreement.

§4.430. Termination of Agreement and Cost Recovery.

(a) At any time and for any reason, either the Commission or the participant may terminate a voluntary cleanup agreement by giving to the other written notice 15 days prior to the stated termination

date. The participant shall pay and the Commission shall recover only those costs incurred or obligated by the Commission before notice of termination of becomes effective. The Commission shall retain the application fee.

(b) Termination of the agreement does not affect any right the Commission has under other law to recover its costs. The Commission shall not issue a certificate of completion to a participant in a voluntary cleanup agreement that is terminated.

(c) If the participant does not pay to the Commission the Commission's costs under a voluntary cleanup agreement before the 31st day after the date the person receives notice that the costs are due and owing, the Commission may request that the attorney general bring an action in the name of the state in Travis County to recover the amount owed plus reasonable legal expenses, including attorneys' fees, witness costs, court costs, and deposition costs, pursuant to Texas Natural Resources Code, §91.657(c).

§4.435. Voluntary Cleanup Work Plans and Reports.

(a) After signing a voluntary cleanup agreement, the participant shall prepare and submit to the Site Remediation Section the work plans and reports required by the agreement.

(b) The Site Remediation Section shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The Site Remediation Section may approve or not approve a voluntary cleanup work plan or report. If the Site Remediation Section does not approve a work plan or report, the Site Remediation Section shall, within the deadline established by the Voluntary Cleanup Agreement, notify the participant of the specific additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the Site Remediation Section may request additional or corrected information.

(d) After considering future land use, the Site Remediation Section may approve work plans and reports submitted under this section that do not require cleanup or removal of all contaminants at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be cleaned up or removed under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address any remaining contaminants.

§4.440. Certificate of Completion and Conditional Certificate of Completion.

(a) If the Site Remediation Section determines that a participant has completed a voluntary cleanup approved under this subchapter, the Commission shall certify that the action has been completed by issuing the participant a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by §4.445 of this title (relating to Persons Released from Liability);

(2) indicate the proposed future land use;

(3) include a legal description of the site and the names of the site's surface and mineral owners and mineral operators at the time the application to participate in the voluntary cleanup program was filed; and

(4) include an Affidavit of Completion on a form prescribed by the Commission. The affidavit of completion is a sworn statement made by the participant that is attached to and becomes part of the certificate of completion issued by the Commission. The affidavit shall:

(A) identify the site and its surface and mineral owners and mineral operators;

(B) identify the response actions performed including, if appropriate, any reliance on engineering or institutional controls;

(C) declare that the degree of inquiry used in determining the appropriate response actions, the response actions, and reporting were consistent with industry standards; and

(D) state that the certificate of completion has not been acquired by fraud, misrepresentation, or knowing failure to disclose material information.

(c) If the Site Remediation Section determines that the participant has substantially completed a voluntary cleanup approved under this subchapter, and that oversight and maintenance of controls and remediation systems provide a strong likelihood of success with minimal maintenance and reporting, the Commission may issue a conditional certificate of completion. The conditional certificate of completion shall:

(1) acknowledge the protection from liability provided by §4.445 of this title (relating to Persons Released from Liability);

(2) indicate the proposed future land use;

(3) include a legal description of the site and the names of the site's surface and mineral owners and mineral operators at the time the application to participate in the voluntary cleanup program was filed;

(4) identify the oversight and maintenance activities and results the person must perform, reach, and maintain for the conditional certificate to remain in force;

(5) include a schedule of activities;

(6) identify responses in case of remedy failure; and

(7) include an Affidavit of Response Action Implementation. The Affidavit of Response Action Implementation is a sworn statement made by the participant and that is attached to and becomes part of the conditional certificate of completion issued by the commission. In addition to all of the elements identified in §4.40(b)(4), the Affidavit of Response Action Implementation shall include a schedule the participant's post closure monitoring activities and reporting to the Railroad Commission of Texas with an estimated date of completion, and identify contingencies that the participant is obligated to implement if any response action fails in whole or in part.

(d) If the Site Remediation Section determines that the participant has not completed a voluntary cleanup approved under this subchapter, the Assistant Director shall so notify the participant, the current surface and mineral owners and the mineral operators of the site that is the subject of the cleanup.

§4.445. Persons Released from Liability.

(a) A person who is not a responsible person, as that term is defined in §4.405 of this title (relating to Definitions), at the time the person applies to participate in a voluntary cleanup does not become a responsible person solely because the person signs the application or the voluntary cleanup agreement.

(b) A participant who is not a responsible person at the time the Commission issues a certificate of completion under §4.440 of this

title (relating to Certificate of Completion and Conditional Certificate of Completion) is released, as of the date of the certificate, from all liability to the state for cleanup of contaminants specified in the voluntary cleanup agreement for areas of the site covered by the certificate, except for releases and consequences that the participant causes.

(c) The release from liability provided by this subchapter does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired by fraud, misrepresentation, or knowing failure to disclose material information; or

(4) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

§4.450. Federal, State, or Local Permits.

(a) A state or local permit is not required for a voluntary cleanup under this subchapter. A participant shall coordinate a voluntary cleanup with ongoing federal and state waste programs.

(b) Any participant conducting a voluntary cleanup shall comply with any state or federal standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a state or federal permit were required.

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

Filed with the Office of the Secretary of State on May 21, 2002.

TRD-200203114
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: June 10, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCREDITATION

SUBCHAPTER AA. ACCOUNTABILITY RATINGS AND ACKNOWLEDGMENTS

DIVISION 1. STANDARD ACCOUNTABILITY SYSTEM

19 TAC §97.1002

The Texas Education Agency (TEA) adopts an amendment to §97.1002, concerning school district accountability ratings and acknowledgments, without changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3298) and will not be republished. The section adopts by reference the most current version of part 1 of the annual accountability manual, which specifies the indicators, standards, and procedures used by the commissioner of education to determine standard accountability ratings and to determine Gold Performance Acknowledgment on additional indicators for Texas public school districts and campuses, as authorized by Texas Education Code (TEC), §§39.051(c)-(e), 39.0721, 39.073, 39.074(a)-(b), and 39.075. Part 1 of the annual accountability manual also specifies procedures for submitting an appeal and system safeguard analyses used to assess the integrity of the accountability system.

Legal counsel with the TEA recommended that the procedures for issuing regular accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The intention is to annually update the rule to refer to the most recently published accountability manual.

The adopted amendment updates the section to adopt by reference *Part 1* of the *2002 Accountability Manual*, dated April 2002, for school year 2001-2002. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in 2002 differ to some degree over those applied in 2001. In 2002, the Texas Assessment of Academic Skills (TAAS) standards for reading, writing, and mathematics will be increased for the *Academically Acceptable / Acceptable* rating to 55.0% passing for "all students" and each student group. The standards for *Exemplary* and *Recognized* remain the same. Also, TAAS standards for 8th grade social studies will be implemented. The *Exemplary* and *Recognized* standards are the same for social studies as the standards for reading, writing, and mathematics. However, the standard for *Academically Acceptable / Acceptable* will be 50.0% at the "all students" level; student groups will not be evaluated this year for social studies. The dropout rate standards also changed for a *Recognized* rating from 3.0% to 2.5% and for an *Academically Acceptable / Acceptable* rating from 5.5% to 5.0%. In addition, the Gold Performance Acknowledgement (GPA) system replaces the Additional Acknowledgments system. All of the previous Additional Acknowledgment indicators are part of the GPA, although the standards for acknowledgment may have changed. In 2002, the GPA system will be awarded to districts and campuses rated *Academically Acceptable* or *Acceptable* or higher on nine measures: Attendance Rate for Grades 1-12; Campus Comparable Improvement in Mathematics and Reading; Algebra I End-of-Course Examination Results; Advanced Academic Course Completion; Advanced Placement / International Baccalaureate Examination Results; College Admissions Test Results; TAAS/TASP Equivalency; and Recommended High School Program Participation. This year, ratings and acknowledgments are scheduled to be released in August 2002.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §§39.051(c)-(e), 39.0721, 39.073, 39.074(a)-(b), and 39.075, which authorize the commissioner of education to specify the

indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203230
Cristina De La Fuente-Valadez
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Texas Education Agency
Effective date: June 13, 2002
Proposal publication date: April 19, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.1, §283.6

The Texas State Board of Pharmacy adopts amendments to §283.1, concerning Purpose, and §283.6, concerning Preceptor Requirements. The amendments are adopted without changes to the proposed text as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1969), and will not be republished.

The amendments, as adopted: (1) change a pharmacist preceptor's certification renewal period to coincide with his or her pharmacist license renewal period; (2) require three hours of preceptor training every two years rather than every three years; and (3) update citations to the new codified Texas Pharmacy Act.

The Board received one comment from the Texas Society of Health-System Pharmacists (TSHP) in favor of the amendments to the rules as proposed, provided the required preceptor training program is easily accessible and that the program's content is updated and fresh. The Board agrees with this comment and will work the Texas colleges of pharmacy to increase availability and update content of the required preceptor training programs.

The amendment is adopted under sections 551.002, and 554.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203225
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 13, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.11

The Texas State Board of Pharmacy adopts new §291.11, concerning Operation of a Pharmacy. The new rule is adopted without changes to the proposed text as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1972), and will not be republished.

The new rule clarifies what constitutes operation of a pharmacy.

No comments were received regarding adoption of the new rule.

The new rule is adopted under sections 551.002, and 554.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

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

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TRD-200203227
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 13, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-8028

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CHAPTER 295. PHARMACISTS

22 TAC §§295.5, 295.7, 295.9

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees, §295.7, concerning Pharmacist License Renewal, and §295.9 concerning Inactive License. The amendments are adopted without changes to the proposed text as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1973), and will not be republished.

The amendments, as adopted: (1) permit a pharmacist, who is at least 72 years old and not actively practicing pharmacy, to renew his or her license without payment of a renewal fee; and

(2) updates citations to the new codified Texas Pharmacy Act and makes other changes necessary due to the codification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under sections 551.002, 554.051, and 554.006 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 554.006 as authorizing the agency to establish reasonable fees sufficient to cover the costs of administering the Texas Pharmacy Act.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

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

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Gay Dodson, R.Ph.
Executive Director/Secretary
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Proposal publication date: March 15, 2002
For further information, please call: (512) 305-8028

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 39. PUBLIC NOTICE

The Texas Natural Resource Conservation Commission (commission) adopts new §39.404, Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities. The commission also adopts amendments to §39.411, Text of Public Notice; §39.419, Notice of Application and Preliminary Decision; §39.420, Transmittal of the Executive Director's Response to Comments and Decisions; §39.603, Newspaper Notice; §39.604, Sign-Posting; and §39.606, Alternative Means of Notice for Voluntary Emission Reduction Permits. Sections 39.404, 39.411, 39.419, 39.420, 39.603, 39.604, and 39.606 are adopted *without changes* to the proposed text as published in the January 11, 2002 issue of the *Texas Register* (27 TexReg 353) and will not be republished. The new and amended sections of Chapter 39 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

During the 75th Legislature, 1997, House Bill (HB) 3019 directed the commission to develop a voluntary emissions reduction plan for the permitting of existing significant sources. These existing significant sources are commonly known as grandfathered facilities. A grandfathered facility is one that existed at the time the legislature created the Texas Clean Air Act (TCAA) in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants. If grandfathered facilities had not been modified since 1971, they continued to be authorized to operate without a permit. The intent of HB 3019 was to create a program that would encourage the remaining grandfathered facilities to voluntarily obtain permits that would reduce the emissions from those facilities. In response to HB 3019, the commission created the Clean Air Responsibility Enterprise (CARE) Committee to develop recommendations for the voluntary permitting of grandfathered facilities.

In 1999, the 76th Legislature used the CARE Committee's recommendation as the basis for Senate Bill (SB) 766, which directed the commission to develop rules containing incentives for the voluntary permitting of grandfathered facilities. This program is known as the Voluntary Emission Reduction Permit (VERP) program. The commission adopted rules to implement the VERP program on December 16, 1999. Since the VERP rules became effective, the owners and operators of a number of grandfathered facilities have taken advantage of the incentives offered by the VERP program and submitted VERP applications for their grandfathered facilities. Additionally, the owners and operators of other grandfathered facilities have submitted permit-by-rule registrations and other new source review permit applications to permit their grandfathered facilities. The deadline to apply for a VERP was August 31, 2001.

Additionally, the 76th Legislature, 1999 amended the Texas Utilities Code, Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Chapter 39, Restructuring of Electric Utility Industry by adopting SB 7. SB 7 required the commission to implement the permitting and allowance requirements of new Texas Utilities Code, §39.264, concerning Emissions Reductions of "Grandfathered Facilities." SB 7 required the commission to develop a mass cap and trade system to distribute emission allowances for use by electric generating facilities (EGFs). Under SB 7, two categories of EGFs are eligible to use the proposed trading system. The first category consisted of EGFs in existence on January 1, 1999, which were not subject to the requirement to obtain a permit under TCAA, §382.0518(g). These facilities are commonly referred to as grandfathered facilities. SB 7 also mandated that grandfathered EGFs apply for a permit on or before September 1, 2000, and obtain a permit by or cease operation after May 1, 2003. The second category of EGFs consisted of permitted EGFs that were not subject to the permitting requirements of SB 7, yet elected to participate in the allowance trading system.

Most recently, the 77th Legislature, 2001, amended Texas Health and Safety Code (THSC), TCAA to require that all grandfathered facilities obtain permits. The mandatory permitting requirements of HB 2912 are the culmination of legislative efforts, beginning in 1997, to permit or otherwise authorize all grandfathered facilities. HB 2912 created four new types of permits for grandfathered facilities: existing facility permits, small business stationary source permits, EGF permits, and pipeline facilities permits. HB 2912 also mandated the dates by which grandfathered facilities must apply for a permit and have controls operational or submit a shutdown notice. Grandfathered facilities that are addressed by an application for a VERP are not required to comply with the provisions of HB 2912 for grandfathered facilities. However, grandfathered facilities that withdraw their VERP applications and elect to submit a permit application for an authorization under HB 2912

will forfeit those incentives, including eligibility for amnesty from enforcement.

To implement these revisions to the TCAA, the commission adopts new and amended rules in 30 TAC Chapter 116, Subchapter A, Definitions; Subchapter H, Permits for Grandfathered Facilities; and Subchapter I, Electric Generating Facility Permits, which are published in this issue of the *Texas Register*.

Additionally, revisions to Chapter 39, Public Notice, were necessary to implement the provisions of HB 2912, §§5.02 - 5.05. The revisions to Chapter 39 are necessary to implement the public participation requirements of HB 2912.

THSC, TCAA, §382.05181(h) provides that applications for pipeline facility permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of §382.05191. TCAA, §382.05191 provides that public participation for initial issuance of a permit under §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision.

THSC, TCAA, §382.0561 requires the commission to provide a public comment period for an application, during which members of the public can submit written statements to the commission regarding the application. The initial issuance of a grandfather permit, with the exception of small business stationary source permits, is subject to notice and comment hearing procedures. Under these procedures, interested persons can request a hearing. The hearing is recorded, and oral comments are accepted. The commission will provide reasonable accommodations to any individual who may wish to comment on a permit but has difficulty providing those comments in writing, including assistance for those persons who are blind, deaf, or require interpreter assistance. The commission requests that such individuals notify the commission staff sufficiently early that arrangements can be made to afford these individuals the opportunity to participate in the permitting process. The commission requires notice of the public comment period, which must be at least 30 days, and may extend or reopen the comment period if appropriate. The notice must meet the requirements of §382.056, which provides specifications relating to the specifics of the newspaper notice and sign-posting, and other requirements for notice.

THSC, TCAA, §382.0561 also requires that public hearings not be conducted under Texas Government Code, Chapter 2001, so they are not contested case hearings. The commission is required to hold a public hearing on an application, prior to granting the permit, if a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. However, the commission is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable. The commission is required to consider all comments received during the comment period and hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

THSC, TCAA, §382.0562 provides for the mailing of notice of the commission's decision on an application to all persons who submitted comments, and to the applicant. The notice must include a response to all comments, and identify any changes to the conditions of the draft permit and the reasons for the change.

Additionally, TCAA, §382.05191 requires the opportunity for a motion for rehearing and judicial review under §382.032. The commission will utilize existing procedural rules concerning motions to overturn action by the executive director, found in 30 TAC Chapter 50 (relating to Actions on Applications and Other Authorizations), to give effect to the intent of the legislature to provide for the intermediate review, by affected persons, of commission actions on applications for grandfathered facility permits. Therefore, the commission is not adopting new procedures for grandfathered facility permits in this chapter.

SECTION BY SECTION DISCUSSION

Subchapter H, Applicability and General Provisions

The adopted new §39.404, Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities, is necessary to implement requirements of HB 2912, §§5.02 - 5.05. The existing §39.403, Applicability, was not available to be opened to propose and adopt changes to include applicability of public notice procedures for the new grandfathered facility permits. The commission believes that the requirements of HB 2912, §§5.02 - 5.05 should be implemented expeditiously, and therefore adopts new §39.404 to specify the applicability of Chapter 39 to the new grandfathered facility permits. HB 2912, §5.03 created a new THSC, §382.05185, which established a new EGF permit for certain facilities located at a site for which the owner or operator has already applied for a permit under SB 7 and for the permitting of additional criteria pollutants at grandfathered coal-fired EGFs for which the owner or operator has already applied for a permit under SB 7. Section 382.05185 also provided that the permit application for such a permit be subject to notice and hearing requirements as provided by THSC, §382.05191, as revised by HB 2912. The adopted new §39.404 implements this requirement by specifying the portions of Chapter 39, Subchapters H and K, that apply to applications for an EGF permit.

HB 2912 also created new THSC, §382.05183 and §382.05186, which established existing facility permits and pipeline facilities permits, respectively, and §382.05181, which required that the permit applications for grandfathered facilities permits were subject to notice and hearing requirements as provided by THSC, §382.05191. The adopted new §39.404 implements this requirement by specifying the portions of Chapter 39, Subchapters H and K, that apply to applications for existing facility permits and pipeline facilities permits.

The adopted amendments to §39.411, Text of Public Notice, are necessary due to the addition of new §39.404, which adds existing facility permits and pipeline facilities permits. The existing §39.411(b)(10)(B) specifies the requirement to include a statement in the public notice concerning the right to request a notice and comment hearing in the text of the public notice for air applications described in §39.403(b)(11) or (12). The adopted §39.411(b)(10)(B) specifies requirements for applications described in §39.403(b)(11) or (12), or §39.404 to include existing facility, pipeline facility, and EGF permits.

The adopted amendments to §39.419, Notice of Application and Preliminary Decision, are necessary due to the addition of new §39.404, which adds existing facility permits and pipeline facilities permits. The existing §39.419(e)(1)(D) refers to an application for initial issuance of a permit described in §39.403(b)(11) or (12). The adopted §39.419(e)(1)(D) refers to an application for initial issuance of a permit described in §39.403(b)(11) or (12), or §39.404. Applicants for initial issuance of existing facility permits and pipeline facilities permits will not be required to publish Notice of Application and Preliminary Decision.

Additionally, revisions are adopted for §39.419(e)(3). The existing §39.419(e)(3) specifies publication requirements for a Notice of Application and Preliminary Decision for permits that are not exempt under §39.419(e)(1)(A) - (C) from publication requirements. The exemptions from publication in §39.419(e)(1) also include a subparagraph (D). The adopted §39.419(e)(3) correctly refers to exemptions under §39.419(e)(1)(A) - (D).

The adopted amendments to §39.420, Transmittal of the Executive Director's Response to Comments and Decision, are necessary to indicate that the transmittal is not required to include instructions for reconsideration of the executive director's decision or for requesting a contested case hearing for existing facility permits, EGF permits, and pipeline facilities permits, in addition to VERPs, because permits for grandfathered facilities are not subject to the contested case hearing process. The adopted rules include a reference to THSC, §§382.05183, 382.05185, and 382.05186 in §39.420(c)(1). The existing §39.420(c)(1) only refers to applications for initial issuance of VERPs under THSC, §382.0519. Additionally, the adopted revisions delete the words "voluntary emission reduction" since multiple permit types are referenced in the adopted language.

Subchapter K, Public Notice of Air Quality Applications

The adopted amendments to §39.603, Newspaper Notice, are necessary to correct a subsection reference. The existing §39.603(e)(1) specifies that a small business applicant does not have to comply with subsection (a)(2) if certain conditions are met. The reference to (a)(2) is incorrect. The adopted §39.603(e)(1) corrects this reference to subsection (c)(2), which specifies the requirements for the publication in the newspaper other than the legal section of the newspaper. The adopted amendments to §39.604, Sign-Posting, are necessary to correct a typographical error in the existing rule.

The adopted amendments to §39.606, Alternative Means of Notice for Voluntary Emission Reduction Permits, are necessary to ensure that alternative means of notice are available for all small businesses who apply to permit their grandfathered facilities.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the changes to this chapter needed to implement the procedural aspects of HB 2912, §§5.02 - 5.04 do not meet the definition of a "major environmental rule" as defined in that statute. The 77th Legislature, 2001, amended THSC to require that all grandfathered facilities obtain permits. The adopted rules implement the procedural requirements associated with the permitting system created by HB 2912, including four different types of permits which will cover all grandfathered facilities, and provide for potential emission reductions. The substantive requirements of the permitting system created by HB 2912 are contained in the 30 TAC Chapter 116 rulemaking, also adopted in this issue of the *Texas Register*.

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. Although the Chapter 116 rules adopted to implement the HB 2912 sections concerning the substantive permitting requirements are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse effects on the economy, productivity, competition, or jobs of the state or a sector of the state, the adopted new sections of Chapter 39 are merely procedural. Furthermore, the analysis required by Texas Government Code, §2001.0225(c) does not apply because the adopted rules do not meet any of the four applicability requirements of a major environmental rule. The adopted 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 adopt a rule solely under the general powers of the agency. The rules are adopted specifically to comply with HB 2912, and do not exceed the requirements of that bill.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the adopted rules. The purpose of the adopted rules is to create the procedural provisions necessary for the implementation of the substantive permitting requirements of HB 2912, and the adopted rules advance this purpose by supporting the permitting system created by HB 2912. This system includes four different types of permits which cover all grandfathered facilities, and provide for potential emission reductions.

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicated that Texas Government Code, Chapter 2007 does not apply to the adopted rules because this action qualifies for two exceptions to the application of Chapter 2007. First, this action is reasonably taken to fulfill an obligation mandated by federal law, and is therefore exempt under Texas Government Code, §2007.003(b)(4). The action is mandated by federal law because the rules will be submitted for EPA approval as part of the SIP, which is mandated by 42 United States Code (USC), §7410. Also, the adopted rules are a necessary component of the permitting program created by HB 2912 and implemented by the changes to Chapter 116, and implement requirements of 42 USC, §7410. Second, §2007.003(b)(13) states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety. The revisions also significantly advance the health and safety purpose. The reductions in nitrogen oxides and volatile organic compounds that will occur through the implementation of the permitting program created by HB 2912 significantly advance a health and safety purpose by assisting the state's efforts to attain the ozone national ambient air quality standards set by the EPA under 42 USC, §7409 for nonattainment areas of the state, and maintain the quality of the state's air in attainment areas. Because any reductions required by these rules are no greater than those required by HB 2912 to implement the procedural requirements specified by the legislature, this action does not impose a greater burden than is necessary to achieve the health and safety purpose. In conclusion, this action is taken in response to a real and substantial threat to public health and safety, designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt from the application of Texas Government Code, Chapter 2007 under §2007.003(b)(4) and §2007.003(b)(13).

Finally, adoption and enforcement of these rules will not burden private real property. The adopted 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 adopted rules do not meet the definition of a taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Although commission rules governing air pollutant emissions are subject to the Texas Coastal Management Program (CMP), the adopted actions concern only the procedural rules of the commission; do not govern or authorize any actions subject to the CMP; and are not themselves capable of adversely affecting a coastal natural resource area. Therefore, the adopted rulemaking is not subject to the CMP.

HEARING AND COMMENTERS

Public hearings on this rulemaking were held at the following times and locations: January 22, 2002, 7:00 p.m., Tyler Junior College Regional Training and Development Center, Room 104, 1530 South Southwest Loop 323, Tyler; January 23, 2002, 7:00 p.m., City of Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; January 24, 2002, 7:00 p.m., City of Odessa City Council Chambers, 5th Floor, 411 West 8th Street, Odessa; January 28, 2002, 6:30 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and January 29, 2002, 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building F, Room 2210, Austin.

The commission received comments from the following organizations and companies: Southeast Coalition of Civic Clubs (SCCC); St. Francis Xavier Catholic Church (St. Francis); Sierra Club Houston Regional Group (HSC); Texas Campaign for the Environment (TCE); and Galveston-Houston Association for Smog Prevention (GHASP).

In addition, the commission received comments from, or on behalf of, the following elected officials: Mr. Larry Green representing the Honorable Sheila Jackson Lee, U.S. House of Representatives, Eighteenth District of Texas; the Honorable Lon Burnam, District 90, Fort Worth, Texas House of Representatives; and the Honorable Ada Edwards, Council Member, District D, City of Houston. Representative Lon Burnam expressed support for the comments submitted by the Houston Sierra Club.

All commenters suggested changes to the proposed rules.

RESPONSE TO COMMENTS

HSC and GHASP commented that the commission should not require comments to be made in writing at a public meeting, since there are circumstances where individuals may prefer to make oral statements instead. HSC and GHASP also stated that the commission should always record public statements so it can use them later in the comment consideration process. GHASP stated that requiring comments to be in writing may be a violation of the federal Clean Air Act. Representative Lon Burnam strongly opposed the requirement to submit all comments in writing.

The commission has made no change in response to these comments. The commission does accept oral comments made at formal public hearings. The commission will provide reasonable accommodations to any individual who may wish to comment on a permit but has difficulty providing those comments in writing, including assistance for those persons who are blind, deaf, or require interpreter assistance. The commission requests that such individuals notify the commission staff sufficiently early that arrangements can be made to afford these individuals the opportunity to participate in the permitting process. Public meetings that may be held in conjunction with a specific air permit are recorded and oral comments are accepted. The initial issuance of a grandfather permit, with the exception of small business stationary source permits, will be subject to notice and comment hearing procedures. Under these procedures, interested persons can request a hearing. The hearing is recorded, and oral comments are accepted. The commission is unaware of any prohibition in the federal Clean Air Act relating to the requirement for submission of written comment.

SCCC, St. Francis, Larry Green, and Council Member Edwards commented on the need for the public to be notified of facilities applying for permits. SCCC and Larry Green suggested a 60- to 90- day notice period. Council Member Edwards suggested six months to one year for notification of a facility applying for a permit.

The commission has made no changes to the rule in response to these comments. The commission agrees that it is important for the public to be notified of pending permit applications, and included adequate notice provisions in the proposed rules. The suggested notice periods of six months to one year would not provide adequate permit review and processing time because THSC, §382.05181(f) requires the commission to take final action on grandfather permit applications within one year of receiving an administratively complete application. Sections 39.418 and 39.603 require all facilities except for facilities qualifying for a small business stationary source permit to publish notice in a newspaper of general circulation in the municipality in which the facility is located or in the municipality nearest the location of the facility. The newspaper notice must be published no later than 30 days after the executive director declares an application administratively complete. This notice is followed by a 30-day public comment period and is intended to give notification early in the permitting process that an application is under review. The 30-day comment period is not a notice that a permit is going to be issued in 30 days. If a hearing is requested and granted during this comment period, the comment period is actually extended beyond 30 days to the end of the hearing. Additionally, §39.604 requires applicants to place signs at the site of the facility declaring the filing of an application for the permit and stating the manner in which the commission may be contacted for further information. Small business stationary source permits are exempted from the requirement to publish newspaper notice by THSC, §382.05184(f).

TCE requested clarification of the commission's determination that the changes to public notice requirements in Chapter 39 implementing HB 2912 §§5.02 - 5.04 do not meet the definition of a major environmental rule.

The commission's analysis regarding the regulatory impact analysis determination is fully discussed elsewhere in this preamble. The commission provides the following discussion to supplement that determination.

Implementing HB 2912, §§5.02 - 5.04 required changes to Chapter 39. However, the substantive rule changes required by these HB 2912 sections are found in Chapter 116. The changes in Chapter 39 are procedural support for the permitting changes in Chapter 116. Whether or not the rules are characterized as a major environmental rule, a regulatory impact analysis is required only if the rulemaking meets any of the four applicability requirements in Texas Government Code, §2001.0225(a). By applying these four factors to the adopted rules, the commission determined that the rules do not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state 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 rules are adopted specifically to comply with HB 2912 and do not exceed the requirements of that bill. The Chapter 39 adopted rules do not meet any of the applicability requirements in Texas Government Code, §2001.0225(a), and for this reason the adopted rules are not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.404, 39.411, 39.419, 39.420

STATUTORY AUTHORITY

The amendments and new section are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0365, which authorizes and governs the commission's small business stationary source program; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.05182, which requires notices for the shutdown of certain grandfathered facilities; §382.05183, which requires certain grandfathered facilities to obtain an existing facility permit; §382.05184, which requires certain grandfathered facilities to obtain a small business stationary source permit; §382.05185, which requires certain EGFs to obtain a permit; §382.05186, which requires certain reciprocating internal combustion engines to obtain a permit; §382.05191, which requires applications for certain permits to publish notice consistent with the procedures for federal operating permits; §382.05192, which requires that certain permits to be renewed in accordance with §382.055; §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules.

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

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Director, Environmental Law Division
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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §§39.603, 39.604, 39.606

STATUTORY AUTHORITY

The amendments are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.05182, which requires notices for the shutdown of certain grandfathered facilities; §382.05183, which requires certain grandfathered facilities to obtain an existing facility permit; §382.05184, which requires certain grandfathered facilities to obtain a small business stationary source permit; §382.05185, which requires certain EGFs to obtain a permit; §382.05186, which requires certain reciprocating internal combustion engines to obtain a permit; §382.05191, which requires applications for certain permits to publish notice consistent with the procedures for federal operating permits; §382.05192, which requires that certain permits to be renewed in accordance with §382.055; §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and TWC, §5.103, which authorizes the commission to adopt rules.

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CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER
SUBCHAPTER B. OUTDOOR BURNING
30 TAC §111.209

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §111.209. Section 111.209 is adopted *without changes* to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1447) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2912, Article 17, 77th Legislature, 2001, amended the Occupation Code by adding a new §801.361, Disposal of Animal Remains, to allow veterinarians to dispose of animal remains by burial or burning under limited circumstances. Occupation Code, §801.361, allows veterinarians to burn or bury animal remains only if they do so on their own property; the property is in a county with a population of less than 10,000; and they do not charge for the burning or burial. The section also restricts the commission from adopting a rule that prohibits conduct authorized by the section. The commission adopts an amendment to Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, in order to make existing rules on burning consistent with the new legislation. The revisions necessary in 30 TAC Chapter 330 to make existing rules on burial consistent with the new legislation were proposed in a separate rulemaking published in the March 29, 2002 issue of the *Texas Register* (27 TexReg 2412).

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

SECTION DISCUSSION

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

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

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 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. The adopted amendment to §111.209 is only intended to make existing commission rules consistent with the new legislative changes made to the Occupation Code, and the rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the amendment does not qualify as a "major environmental rule." Furthermore, the analysis required by §2001.0225(c) does not apply because the adopted rule does not meet any of the four applicability requirements of a major environmental rule. 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 adopt a rule solely under the general powers of the agency. The rule is adopted specifically to comply with HB 2912, and does not exceed the requirements of that bill. The commission invited public comment on the regulatory impact analysis determination, and no comments were received.

TAKINGS IMPACT ASSESSMENT

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

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

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

The specific purpose of the adopted rule is to make existing commission rules consistent with the new legislative changes made to the Occupation Code by HB 2912. The adopted rule authorizes veterinarians to burn animal remains if they do so on their

own property; the property is in a county with a population of less than 10,000; and they do not charge for the burning. Because of the limited circumstances under which burning is authorized, the commission anticipates that promulgation and enforcement of the adopted rule will not have a direct or significant adverse effect on any CNRAs, nor will the rulemaking have a substantive effect on commission actions subject to the CMP. Therefore, the rulemaking is consistent with the applicable goals and policy. The commission invited public comment on CMP consistency determination, and no comments were received.

HEARING AND COMMENTERS

A public hearing on the proposal was offered in Austin on March 28, 2002. The public comment period closed on April 1, 2002, and no comments were received.

STATUTORY AUTHORITY

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

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

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Subchapter A, Definitions, §116.10 and §116.18; and Subchapter I, Electric Generating Facility Permits, §§116.910, 116.911, 116.913, 116.921, and 116.930. The commission adopts new §§116.770 - 116.772, 116.774 - 116.777, 116.779 - 116.781, 116.783, 116.785 - 116.788, 116.790, 116.793 - 116.802, and 116.804 - 116.807 in Subchapter H, Permits for Grandfathered Facilities; and new §§116.917, 116.918, 116.926, and 116.928 in Subchapter I. Sections 116.18, 116.771, 116.774 -116.776, 116.779, 116.780, 116.783, 116.787, 116.790, 116.797, 116.807, 116.911, 116.913, 116.917, and 116.928 are adopted *with changes* to the proposed text as published in the January 4, 2002 issue of the *Texas Register* (27 TexReg 78). Sections 116.10, 116.770, 116.772, 116.777, 116.781, 116.785, 116.786, 116.788, 116.793 - 116.796, 116.798 - 116.802, 116.804 - 116.806, 116.910, 116.918, 116.921, 116.926, and 116.930 are adopted *without changes* and will not be republished. All sections of Subchapter H except, §116.776, will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP). The new and amended sections of Subchapter A and I will also be submitted to the EPA as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

During the 75th Legislature, 1997, House Bill (HB) 3019 directed the commission to develop a voluntary emissions reduction plan for the permitting of existing significant sources. These existing significant sources are commonly known as grandfathered facilities. A grandfathered facility is one that existed at the time the legislature created the Texas Clean Air Act (TCAA) in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants. If grandfathered facilities had not been modified since 1971, they continued to be authorized to operate without a permit. The intent of HB 3019 was to create a program that would encourage the remaining grandfathered facilities to voluntarily obtain permits that would reduce the emissions from those facilities. In response to HB 3019, the commission created the Clean Air Responsibility Enterprise (CARE) Committee to develop recommendations for the voluntary permitting of grandfathered facilities.

In 1999, the 76th Legislature used the CARE Committee's recommendation as the basis for Senate Bill (SB) 766, which directed the commission to develop rules containing incentives for the voluntary permitting of grandfathered facilities. This program is known as the Voluntary Emission Reduction Permit (VERP) program. The commission adopted rules to implement the VERP program on December 16, 1999. Since the VERP rules became effective, the owners and operators of a number of grandfathered facilities have taken advantage of the incentives offered by the VERP program and submitted VERP applications for their grandfathered facilities. Additionally, the owners and operators of other grandfathered facilities have submitted permit-by-rule registrations and other new source review permit applications to permit their grandfathered facilities. The deadline to apply for a VERP was August 31, 2001.

Additionally, the 76th Legislature, 1999, amended the Texas Utilities Code, Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Chapter 39, Restructuring of Electric Utility Industry by adopting SB 7. SB 7 required the commission to implement the permitting and allowance requirements of new Texas Utilities Code, §39.264, concerning Emissions Reductions of "Grandfathered Facilities." SB 7 required the commission to develop a mass cap and trade system to distribute emission allowances for use by electric generating facilities (EGFs). Under SB 7, two categories of EGFs are eligible to use the proposed trading system. The first category consisted of EGFs in existence on January 1, 1999, which were not subject to the requirement to obtain a permit under TCAA, §382.0518(g). These facilities are commonly referred to as grandfathered facilities. SB 7 also mandated that grandfathered EGFs apply for a permit on or before September 1, 2000, and obtain a permit by, or cease operation after May 1, 2003. The second category of EGFs consisted of permitted EGFs that were not subject to the permitting requirements of SB 7, yet elected to participate in the allowance trading system.

Most recently, the 77th Legislature, 2001, amended Texas Health and Safety Code (THSC), TCAA to require that all grandfathered facilities obtain permits. The mandatory permitting requirements of HB 2912 are the culmination of legislative efforts, beginning in 1997, to permit or otherwise authorize all grandfathered facilities. HB 2912 created four new types of permits for grandfathered facilities: existing facility permits; small business stationary source permits; EGF permits; and pipeline facilities permits. HB 2912 also mandated the dates by which grandfathered facilities must apply for a permit and have controls operational or submit a shutdown notice. Grandfathered facilities that are addressed by an application for a VERP are not required to comply with the provisions of HB 2912 for grandfathered facilities. However, grandfathered facilities that withdraw their VERP applications and elect to submit a permit application for an authorization under HB 2912 will forfeit those incentives, including eligibility for amnesty from enforcement.

HB 2912 specifies certain requirements based upon the geographic location of the grandfathered facility. Grandfathered facilities must submit permit applications or notices of shutdown by September 1, 2003 for facilities in East Texas; September 1, 2004 for facilities in West Texas; and for small business stationary source permits, by September 1, 2004, irrespective of the location of the facility. The commission is required to act on applications by the first anniversary after receipt of an administratively complete application. HB 2912 provides that the applicant may request a onetime, one-year, "good cause" extension of time to install controls if the permit is not issued within the one year from receipt of an administratively complete application. This provision for a good cause extension has been added as new §116.771(b).

Existing facility permits are available for all grandfathered facilities, and require consideration of ten-year-old best available control technology (BACT), considering the age and remaining useful life of the facility. Existing facility flexible permits are also available for grandfathered facilities and facilities permitted under a VERP, located at a single site. Small business stationary source permits are available for sources defined as a small business stationary source in TCAA, §382.0365(h), and which do not have to submit emissions inventory information under TCAA, §382.014. Facilities eligible for small business stationary source permits may not emit air contaminants after March 1, 2008 if they do not have a permit or a pending application. HB 2912 provides that gas-fired EGFs that were required to obtain a permit under SB 7, or were exempt from the requirement to obtain a SB 7 permit, are considered permitted for all air contaminants. The commission will issue a "permit" to these facilities. The permit will identify the facilities which have been permitted and will contain the general provisions in §116.913. Permits issued under §116.917 will receive the additional general and special conditions in §116.918. HB 2912 also provided that coal-fired EGFs that were required to obtain a permit under SB 7 are considered permitted for nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter (PM) as it relates to opacity. HB 2912 further provides that coal-fired EGFs are eligible for an EGF permit for the criteria pollutants not addressed by the SB 7 permit. Additionally, TCAA, §382.05185 provides for the permitting of: 1) generators that do not generate electric energy for compensation and are not used more than 10% of the annual operating schedule; and 2) auxiliary fossil-fuel-fired combustion facilities that do not generate electric energy and do not emit more than 100 tons per year (tpy)of any air contaminant.

Grandfathered reciprocating internal combustion engines that are part of the processing, treating, compression, or pumping facilities connected to, or part of, a gathering or transmission pipeline may apply for a pipeline facilities permit. In the proposed rule, the commission provided that an applicant could apply for a single permit for all engines connected to a pipeline or a separate permit for all discrete and separate engines. In this final rule, the commission is changing the rule language to read that the applicant may apply for a single permit for a group of engines connected to a pipeline or a separate permit for all discrete and separate engines. The commission is making this change in part due to the difficulty in determining where one pipeline ends and another begins, thus making it difficult to determine if all engines have been included in the permit. Additionally, the commission must allow for mandatory emission reductions to be achieved at either a single engine or by averaging reductions among multiple engines connected to a pipeline. HB 2912 requires a 50% reduction in NO_x emissions at facilities located in East Texas, and allows the commission to require up to a 50% reduction in volatile organic compounds (VOC). For facilities located in West Texas, the commission may require up to a 20% reduction in NO_x and VOC emissions. For facilities located in West Texas, the commission will focus on reductions that can be achieved at little or no capital cost. Owners or operators who elect to average among more than one account cannot include reductions made to comply with other state or federal requirements. However, if the owner or operator does not average emissions to achieve the mandatory reductions, they may include reductions made since January 1, 2001 to comply with other state or federal requirements.

TCAA, §382.05181(h), provides that applications for pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of TCAA, §382.05191. TCAA, §382.05191 provides that public participation for initial issuance of a permit under TCAA, §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and TCAA, §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. Notice and comment hearing procedures provide for public inspection of the draft permit and a 30-day comment period. In this comment period, any person may submit a written statement to the commission. Additionally, a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located can request a hearing. At the hearing, any person may submit an oral or written statement concerning the application. The public comment period extends to the close of the hearing. The commission will send notice of the final action on the permit to all persons who comment during the public comment period or at a public hearing. The notice will include a response to any comment submitted during the public comment period. The notice and comment hearing process is the same process authorized for VERPs by SB 766.

Small business stationary source permits are not subject to these notice and comment hearing procedures. Review and renewals of existing facility permits, EGF permits, pipeline facilities permits, and small business stationary source permits will be conducted under the same procedures for preconstruction permits, generally. Existing facility permits, EGF permits,

pipeline facilities permits, and small business stationary source permits are subject to judicial review, under TCAA, §382.032.

HB 2914, §78, 77th Legislature, 2001, created a new incentive program to assist in retrofitting reciprocating internal combustion engines associated with pipelines. The new TCAA, §382.051865, Reimbursement Program for Certain Emissions Reductions from Reciprocating Internal Combustion Engines Associated with Pipelines, provides that the commission may develop a program, in cooperation with local governments, other agencies, and EPA to provide incentives to owners or operators of reciprocating internal combustion engines that are required to make a 50% reduction in NO_x emissions under new TCAA, §382.05186, Pipeline Facilities Permits.

HB 2914, §78 also established an Emissions Reductions Incentives Account within the Clean Air Account Number 151. The section establishes guidelines for how any money deposited into this account is to be distributed to owners or operators making reductions in NO_x emissions from grandfathered reciprocating internal combustion engines associated with pipelines. HB 2914 provides for a partial reimbursement for the capital cost of installing technology to reduce emissions that meet certain criteria. To implement these revisions, the commission is adopting new §116.776, Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region, in Subchapter H. The section identifies the facilities which are eligible for a partial reimbursement for the cost of controls. The rules also contain the criteria the commission will consider in determining who will receive money from the account and how much money a particular facility will receive. In order to be eligible for reimbursement under this program, the owner or operator of a grandfathered reciprocating internal combustion engine must make at least a 50% reduction in actual emissions of NO_x as compared to the emissions reported for the facility in the 1997 industrial point source emissions inventory. The commission believes that an actual reduction in emissions is necessary to receive reimbursement in order to assure that air quality benefits will be achieved under this incentive program. Another criteria for reimbursement is the requirement to obtain a pipeline facilities permit or replace the grandfathered engine with an electric engine. This implements the HB 2914 requirement that limits reimbursement to facilities required to achieve a 50% reduction in NO_x emissions. Facilities that obtain pipeline facilities permits are the only facilities required to achieve a 50% reduction in NO_x emissions and the replacement of grandfathered engines with electric engines will eliminate that source of NO_x emissions. In response to comments, the commission has made changes to when the owner or operator of a pipeline facility must request reimbursement from the Emissions Reductions Incentives Account. These changes are described in the response to comments. The commission also changed §116.776(a)(10) to clarify that only facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement. In the proposed rule, the commission identified the following criteria for distribution: location of the facility; percentage of reduction in the hourly emissions of NO_x; cost effectiveness of the controls; and when the reductions are actually achieved and the request for reimbursement is received. Due to the changes in when the request for reimbursement must be received, the commission is deleting when the request for reimbursement is received as a criteria for reimbursement. The remaining criteria will provide incentives to ensure that reimbursements for emission reductions are prioritized for those reductions that occur in areas of the state where those reductions will be beneficial, for projects that achieve the highest percentage reductions first, are most cost effective, and for projects that occur early. Weighting the criteria to provide for larger, cost effective, earlier reductions considering the area of the state where the reduction is proposed will maximize the air quality benefits for the state. Guidance concerning the implementation of the reimbursement program is still under development by the commission. Interested stakeholders will be provided the opportunity to comment on the guidance before the guidance is finalized.

The proposal contained language allowing the commission to delegate to the executive director the authority to take action on permit applications for grandfathered facilities. The commission solicited comment on the proposal to delegate to the executive director the authority to take any action on these grandfathered facility permits, and also to make decisions regarding the implementation and administration of the permitting program, generally. The commission received no comments in response to this solicitation. Therefore, the commission has changed the rule in the delegation sections to state that the commission delegates to the executive director the authority to take any action on these grandfathered facility permits, and also to make decisions regarding the implementation and administration of the permitting program, generally. As a consequence of this delegation, it is necessary for the commission to change the Notice of Final Action sections of the rule to allow for the filing of a motion to overturn rather than a petition for rehearing. In addition, the commission has added language to §116.928 that states that any Notice of Final Action sent regarding a permit action under Subchapter I will state that a person affected by a decision of the executive director may file a motion to overturn the executive director's decision under §50.139 rather than a petition for rehearing. It was necessary to add this language to §116.928 because the commission did not originally propose changes to §116.922 (relating to Notice of Final Action). The commission has provided further detail concerning the specifics of this rulemaking in the Response to Comments portion of this preamble.

To implement these revisions to TCAA, the commission adopts new and amended rules in Chapter 116, Subchapter A, Definitions; Subchapter H, Permits for Grandfathered Facilities; and Subchapter I, Electric Generating Facility Permits. Additionally, revisions to 30 TAC Chapter 39, Public Notice, are necessary to implement the provisions of HB 2912. The adopted amendments to Chapter 39 are also published in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The adopted amendment to §116.10, General Definitions, revises the definition of "grandfathered facility" to be consistent with TCAA, §382.0518(g). The revised definition clarifies that a grandfathered facility is one that is not a new facility, was constructed prior to August 30, 1971 (or no construction contract was executed on or before August 30, 1971 that specified a beginning construction date on or before February 29, 1972) and has not been modified since August 30, 1971.

The amendments to §116.18, Electric Generating Facility Permits Definitions, are adopted with changes to the proposed text. The adopted amendments add a definition for "natural gas-fired electric generating facility" for consistency with the EGF permit requirements of HB 2912. HB 2912, in TCAA, §382.05185(i), provides that a natural gas-fired EGF includes a facility that was

designed to burn either natural gas or fuel oil of a grade approved by commission rule. In general, physical or operational changes at a facility to allow the burning of fuel oil will be considered a part of the design as long as they do not constitute a modification of the facility. It is the commission's position that "designed to burn" usually means that all of the necessary equipment (including fuel oil tanks, fuel lines, atomizers, and pre-heaters if necessary) were constructed and maintained as part of the grandfathered EGF. Any modification necessary to allow an EGF to burn fuel oil will be required to comply with the requirements of Subchapter B, New Source Review Permits, before beginning the construction.

The commission conducted a modeling analysis of grandfathered EGFs with the potential to burn fuel oil in all areas of the state. The commission looked at the maximum short-term emission rate for SO_2 associated with burning fuel oil. The modeling approach assumed all facilities operated continuously at maximum firing rate. This approach is conservative because not all grandfathered gas-fired EGFs designed to burn fuel oil will be firing fuel oil at the maximum firing rate at the same time. A screening procedure was used for the initial analysis. For those sites that did not meet screening criteria, a more detailed analysis was performed. The commission first looked at firing fuel oil with a sulfur content of 0.3% by weight or less for those facilities in Harris and Jefferson Counties and fuel oil with a sulfur content of 0.7% by weight or less for all other counties in the state. Facilities in Harris and Jefferson Counties are limited to burning fuel oil with a sulfur content of 0.3% by weight or less by current rules. Using the approach outlined previously, the SO_2 maximum predicted ground level concentrations were compared to relevant air standards. For the initial screening procedure, all concentrations were below standards, with the exception of the state SO_2 30-minute standard. Two sites were identified as potentially exceeding the state SO_2 standard. These sites were then modeled again using a more detailed analysis. The number of hours these sites were predicted to exceed the SO_2 standard were counted at each point and found to be less than 0.15% of all hours modeled. Due to the conservative nature of the modeling demonstration, which assumes all sources operating at full capacity simultaneously at all hours of the year, 100% compliance with the state SO_2 standard is expected. Metals have been identified as the primary hazardous air pollutant associated with the burning of fuel oil. Adverse impacts from metals are caused by long-term exposure to unacceptable levels of emissions. The commission does not expect long-term exposure to metals emissions because fuel oil is only burned for short periods of time due to natural gas curtailments or extremely high natural gas prices. Historical data has shown that these curtailments and high natural gas prices have occurred infrequently and last only for short periods of time. Thus, the commission does not expect any adverse health effects associated with the burning of fuel oil. However, the commission has added a general condition to §116.913 requiring the EGF to keep records of fuel oil burning and submit those records with the report required under §101.336(b). In addition, EPA is developing a maximum achievable control technology (MACT) standard which is expected to address emissions of metals, primarily nickel, from fuel oil fired EGFs. Any EGF which burns fuel oil for any extended period of time would likely be subject to this MACT standard. The commission has also added language in §116.913(a)(8) that clarifies that the burning of waste or used oils is not authorized under Subchapter I. Based on this analysis, and with the limitations mentioned previously, the commission's Toxicology and Risk Assessment Section has concluded that burning American Society for Testing and Materials (ASTM) grades of fuel oil or any blend of ASTM grades of fuel oil, as limited by the adopted rules, will not pose adverse health or welfare effects in the general public. The establishment of acceptable fuel oil grades does not relieve the owner or operator of a natural-gas-fired EGF from the responsibility to comply with any emissions limitations or conditions of any permit or state or federal regulation.

The adopted amendments also add a definition for "normal annual operating schedule." This definition is needed to establish the normal annual operating schedule at an EGF site. The normal annual operating schedule is needed to determine if a generator that the owner or operator is seeking to permit under an EGF permit is used not more than 10% of the normal annual operating schedule as required by TCAA, §382.05185(d)(1). The final rule establishes the normal operating schedule as the maximum number of operating hours for an EGF in any 12 consecutive month period between 1997 and 1999. For sites with more than one EGF, the owner or operator may use the EGF with the highest number of operating hours.

Subchapter H, Permits for Grandfathered Facilities

The adopted amendments to Subchapter H include changing the subchapter title from "Voluntary Emission Reduction Permits" to "Permits for Grandfathered Facilities" in order to correctly reflect the modified content of the subchapter. The subchapter has been divided into four divisions. The existing sections of the subchapter are placed into Division 4, Voluntary Emission Reduction Permits. Division 1, General Applicability; Division 2, Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits; and Division 3, Existing Facility Flexible Permits contain new sections of Subchapter H adopted to implement and administer the requirements of HBs 2912 and 2914.

Division 1, General Applicability

Division 1 contains the general requirement for a grandfathered facility to obtain a permit, permit by rule, or shutdown. The owner or operator of a grandfathered facility must choose which permitting option is best for his or her facility and situation. If the facility meets the qualifications, the owner or operator may choose one of the new types of types of permits for grandfathered facilities contained in Division 2 and 3 of this subchapter or the electric generating facility permit contained in Subchapter I. The owner or operator may also choose any other permit type under Chapter 116 or permit by rule under Chapter 106 for which the facility qualifies as long as the application is submitted by the applicable deadline contained in this division. Adopted new §116.770, Requirements to Apply, contains the deadlines by which the owner or operator of a grandfathered facility must apply for a permit to operate that facility under Chapter 116, qualify for a permit by rule under 30 TAC Chapter 106, or submit a notice of shutdown. As required by HB 2912, a permit application or notice of shutdown must be submitted before September 1, 2003, for facilities located in the East Texas region and before September 1, 2004, for facilities located in the West Texas region and El Paso County. HB 2912 defines the East Texas region as all counties traversed by or east of Interstate Highway 35 North of San Antonio or traversed by or east of Interstate Highway 37 South of San Antonio, including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. The West Texas region is then defined as all counties not contained in the East Texas region. This definition is slightly different from the definition created by SB 7 in that the SB 7 definition for West Texas region does not include El Paso

County. Therefore, rather than create a new definition, the commission uses the language, "West Texas Region as defined in §101.330 of this title (relating to Definitions) and El Paso County" in place of the West Texas region as defined by HB 2912.

New §116.771, Implementation Schedule for Additional Controls, is adopted with changes to the proposed text. The adopted new section explains in subsection (a) the implementation schedule to be contained in a permit if the installation of additional controls is required for a grandfathered facility to meet an emissions limit for a pollutant. As required by HB 2912, required controls must be installed and operating before March 1, 2007, for facilities located in the East Texas region and before March 1, 2008, for facilities located in the West Texas region and El Paso County. Also as provided by HB 2912 the applicant may request a onetime, up to one-year "good cause" extension of the time to install controls if the permit is not issued within one year of the receipt of an administratively complete application. This good cause extension language has been added as §116.771(b).

Consistent with TCAA, §382.05182, Notice of Shutdown, adopted new §116.772, Notice of Shutdown, establishes the procedures for submitting a notice of shutdown in lieu of obtaining a permit for a grandfathered facility, and the deadlines by which a grandfathered facility shutting down must cease emitting air contaminants. Facilities for which the owner or operator submits a notice of shutdown by the application deadlines contained in §116.770 may continue to operate until March 1, 2007, if the facility is located in the East Texas region or March 1, 2008, if the facility is located in the West Texas region or El Paso County. The deadlines for sources eligible for a small business stationary source permit are described in the following discussion of §116.774. Facilities that have been shut down and for which a notice of shutdown has been submitted must obtain authorization under Chapter 116 or Chapter 106 prior to restarting operations. In order to enable the commission to keep better track of facilities which are shut down, the notice of shutdown will be required to include, at a minimum, an identification of the facility being shut down, the date the facility intends to cease operating, and an inventory of the type and amount of emissions that will be eliminated.

Division 2, Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits

New §116.774, Eligibility for Small Business Stationary Source Permits, is adopted with changes to the proposed text. The adopted new section states the facilities which are eligible for a small business stationary source permit in accordance with TCAA, §382.05184. Only the owners or operators of facilities located at small business stationary sources as defined by TCAA, §382.0365(h), and which are not required by TCAA, §382.014 to submit emissions inventories to the commission may apply for a small business stationary source permit. The owner or operator must apply for the small business stationary source permit before September 1, 2004. The new section specifies that any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under proposed §116.772, located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted or has a pending permit application under Chapter 116, or a pending registration for a permit by rule under Chapter 106. The new section also requires an application for a small business stationary source permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter. The commission revised §116.774(b) to clarify that a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted, has a permit application pending, or has a registration or pending registration for a permit by rule.

New §116.775, Eligibility for Pipeline Facilities Permits, is adopted with changes to the proposed text. The adopted new section identifies the facilities which are eligible for a pipeline facilities permit in accordance with TCAA, §382.05186. The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that are part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit. The new section also requires an application for a pipeline facilities permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with the subchapter. The new section allows the owner or operator of more than one grandfathered reciprocating internal combustion engine to apply for a pipeline facilities permit for a single grandfathered engine or for a group of grandfathered engines connected to or part of a gathering or transmission pipeline. The commission revised §116.775(d) to clarify that the owner or operator may apply for a permit for a single engine or a group of engines.

New §116.776, Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Engines Located in the East Texas Region, is adopted with changes to the proposed text. The adopted new section implements the requirements of HB 2914, §78 to establish procedures and criteria for reimbursement to owners or operators for the partial cost of installing controls to reduce emissions from grandfathered reciprocating internal combustion engines at facilities associated with pipelines. The new section establishes which facilities will be eligible for reimbursement, the limitations on reimbursement, and the criteria for distribution. The adopted subsection (a)(6) was revised to require identification of those facilities requesting a reimbursement from the Emissions Reductions Incentives Account at the time the permit application is filed. However, no money can be paid to a facility until the permit is issued and the required reductions have been accomplished at the facility. The commission also clarified in §116.776(a)(10) that only the owners or operators of grandfathered engines required to reduce emissions of NO_x by some other state or federal law are not eligible for reimbursement. Because grandfathered engines in nonattainment areas for ozone are required to reduce emissions of NO_x, they are not eligible for reimbursement. Therefore, the adopted criteria for distribution in subsection (c)(1) will only consider whether a facility is located in an attainment area for ozone or a near nonattainment area for ozone.

Although HB 2912 limits reimbursement to the owners or operators of those facilities required to reduce emissions of NO_x by 50% because they are seeking a pipeline facilities permit, the commission believes it is also appropriate to provide the opportunity for reimbursement to certain owners or operators who choose to replace their grandfathered internal combustion engines with new electric engines. This section will allow the commission to process requests for reimbursement for the replacement of grandfathered reciprocating internal combustion

engines through the registration of the replacement electric engines. Registration of the electric engines is necessary because there is no requirement to permit an electric engine since there are no emissions associated with electric engines.

Adopted new §116.777, Eligibility for Existing Facility Permits, states the facilities which are eligible for an existing facility permit in accordance with TCAA, §382.05183. The owner or operator of any grandfathered facility may apply for an existing facility permit. The new section also requires an application for an existing facility permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e), and states that the facility's owner or operator is responsible for applying for the permit and complying with Subchapter H.

New §116.779, Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits, is adopted with changes to the proposed text. The adopted new section specifies the application requirements and demonstrations which must be met in order for a facility to be granted a small business stationary source permit, pipeline facilities permit, or existing facility permit. These requirements are consistent with the requirements for other permits issued under Chapter 116.

Adopted new §116.779(a)(1) provides that the emissions from the facility must comply with the rules and regulations of the commission, including the protection of public health and physical property. The commission may not issue a permit for a grandfathered facility if it finds that the emissions from the grandfathered facility will not be protective of public health and physical property. The requirement to protect public health and physical property is also included in the adopted §116.794(1), concerning existing facility flexible permits and the adopted §116.917(a)(1), concerning permits for certain grandfathered coal-fired EGFs and certain grandfathered facilities located at EGF sites. In order to assure that permits are protective of public health and property, the commission will conduct an appropriate health effects review for each permit application for a grandfathered facility. Details of what the review will entail will be developed and provided in a guidance document. The guidance document will be published at a later date, and the commission will invite stakeholder input prior to finalizing the guidance. The permit may also have provisions for the measurement of air contaminants, including installation of sampling ports and sampling platforms.

In order to be consistent with the current review process for permits and applicable federal requirements, §§116.779, 116.794, and 116.917 require the owner or operator of a grandfathered facility applying for a small business stationary source permit, pipeline facilities permit, existing facility permit, existing facility flexible permit, or EGF permit to be able to demonstrate that they meet applicable federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Facilities must be able to meet performance standards specified in the application and may be required to provide information that demonstrates ongoing compliance after the permit is issued. If applicable, facilities would be required to comply with Prevention of Significant Deterioration (PSD) and nonattainment review as specified in Chapter 116, Subchapter B. Since grandfathered facilities must comply with federal requirements, if applicable, it is appropriate to ensure that these facilities are in compliance with federal requirements in the process of reviewing applications. These sections also require the facility to submit air dispersion modeling if a more refined health effects review is required. Finally, these sections require the application to identify each grandfathered facility to be included in the permit, identify the air contaminants emitted, and provide emission rate calculations.

Adopted new §116.779(b) specifies additional requirements which apply to applicants for a pipeline facilities permit. In accordance with TCAA, §382.05186(e), facilities located in the East Texas region will be required to demonstrate that each engine will achieve at least a 50% reduction of the hourly emissions rate of NO_x, and may also be required to demonstrate a 50% reduction of the hourly emissions rate of VOC, both expressed in terms of grams per brake horsepower-hour (g/bhp-hr). Consistent with TCAA, §382.05186(f), the new section also states that the commission shall require up to a 20% reduction in the hourly emissions rate of NO_x and may require up to a 20% reduction in the hourly emissions rate of VOC, expressed in terms of g/bhp-hr, for facilities located in the West Texas region or El Paso County. In accordance with TCAA, §382.05186(b), the proposed section allows the owner or operator of more than one grandfathered reciprocating internal combustion engine to average the reductions achieved among more than one engine connected to or part of a gathering or transmission pipeline in order to demonstrate the required reductions or to demonstrate that the required reductions will be achieved at each individual facility. Consistent with TCAA, §382.05186(c) and (d), the new section states that, if the owner or operator chooses to average among engines located in both the East and West Texas regions or El Paso County, the owner or operator must demonstrate that the sum of the reductions achieved from all of the engines located in the East Texas region will achieve the 50% reduction required for facilities located in the East Texas region. If the emission reductions required by this adopted subsection will be achieved by averaging reductions, the rule also states that the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by this adopted subsection will be achieved at one account, the rule allows the reduction to include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

Adopted §116.779(c) specifies additional requirements with which applicants for an existing facility permit will have to comply. In accordance with TCAA, §382.05183(b), applicants for existing facility permits will have to propose an air pollution control method that is at least as beneficial as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months (ten-year-old BACT) before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility, and identify the date by which the control method will be implemented.

New §116.780, Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits, is adopted with changes to the proposed text. The adopted new section requires that an applicant for a pipeline facilities permit or an existing facility permit publish notice of intent to obtain a permit in accordance with Chapter 39, Subchapters H and K. The new section establishes that any person who may be affected by emissions from the grandfathered facility seeking a permit may request that the commission hold a notice and comment hearing on the permit application. The new section states that any hearing request must be submitted during the 30-day comment period, which ends 30 days after publication of the notice of intent. The new

section specifies the procedures and requirements for the hearing and the rights of affected persons. In accordance with TCAA, §382.05181, small business stationary source permits are not subject to these notice and comment hearing procedures. The commission corrected a typographical error in §116.780(d) to correctly reference procedures in §116.783.

Adopted new §116.781, Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits, specifies the applicability of the hearing requirements in the section, the responsibilities of the commission in determining whether or not to hold a hearing, the applicant's responsibilities if a hearing is to be held, and the requirements regarding submission of oral or written statements and data concerning a draft permit. TCAA, §382.05181(h) provides that applications for pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of TCAA, §382.05191. TCAA, §382.05191 provides that public participation for initial issuance of a permit under TCAA, §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing.

New §116.783, Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications, is adopted with changes to the proposed text. The adopted new section specifies the commission's responsibilities for sending notice of the final action on an application for a pipeline facilities permit or an existing facility permit, and the information that the commission must include in the notice. The new section will require the commission to individually notify persons who commented during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The proposed rule stated that the notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing and for judicial review. Because, in §116.790, the commission is delegating to the executive director the authority to take any action on a permit issued under this division, this section now requires that the notice state that any person affected by the decision of the executive director may file a motion to overturn rather than a petition for rehearing.

Adopted new §116.785, Permit Fee, establishes a permit fee of $450 for persons applying for a permit under Subchapter H, Division 1, unless the facility is a small business stationary source, as defined by TCAA, §382.0365(h), then the fee will be $100. These fees will allow the commission to partially offset the cost of processing the applications. The new section also establishes requirements for payment and return of fees. TCAA, §382.062 authorizes the commission to establish fees for permits.

Adopted new §116.786, General and Special Conditions, allows the commission to include general and special conditions in the permits issued under Subchapter H, Division 2, and requires that permit holders comply with any and all general and special conditions that the permit may contain. The new section also lists the general conditions permit holders are subject to, regardless of whether they are specifically stated within the permit document. These requirements are consistent with the requirements for other permits issued under Chapter 116.

New §116.787, Amendments and Alterations of Permits Issued Under this Division, is adopted with changes to the proposed text. The adopted new section specifies that owners or operators planning the modifications of a facility permitted under Chapter 116, Subchapter H, Division 2, must comply with the requirements of Subchapter B, New Source Review Permits, before beginning the construction of the modification. The new section also states that amendments and alterations of permits issued under Subchapter H, Division 2, are subject to the requirements of Subchapter B. The commission corrected a typographical error in this section.

Adopted new §116.788, Renewal of Permits Issued Under this Division, implements TCAA, §382.055 and the changes to §382.05192 to require that small business stationary source permits, pipeline facilities permits, and existing facility permits be renewed in accordance with Chapter 116, Subchapter D, Permit Renewals.

New §116.790, Delegation, is adopted with changes to the proposed text. In accordance with the commission's authority under TCAA, §382.061, and Texas Water Code (TWC), §5.122, adopted new §116.790 delegates to the executive director the authority to take any action on a permit issued under Subchapter H, Division 2.

Division 3, Existing Facility Flexible Permits

Adopted new §116.793, Eligibility for Existing Facility Flexible Permits, identifies the conditions under which a grandfathered facility or group of grandfathered facilities is eligible for an existing facility flexible permit in accordance with TCAA, §382.05183(c). Consistent with §382.05183(c), the new section also allows facilities permitted under §382.0519 to be included in the existing facility flexible permit. The new section requires an application for an existing facility flexible permit to be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e). The new section also requires specific actions by owners or operators of facilities covered by an existing facility flexible permit for changes of ownership. The new section specifies that the facility's owner or operator is responsible for applying for the permit and complying with Subchapter H, except after a change of ownership as explained in the section.

Adopted new §116.794, Existing Facility Flexible Permit Application, specifies the application requirements and demonstrations which must be met in order for a facility to be granted an existing facility flexible permit. These requirements are consistent with current flexible permit requirements, except for the required level of control. The level of control required by the adopted section, consistent with the requirement of TCAA, §382.05183, is at least as beneficial as ten- year-old BACT, considering the age and remaining useful life of the facility.

Adopted new §116.795, Public Participation for Initial Issuance of Existing Facility Flexible Permits, requires that an applicant for an existing facility flexible permit publish notice of intent to obtain a permit in accordance with Chapter 39, Subchapters H and K. The new section establishes that any person who may be affected by emissions from the grandfathered facility seeking a permit may request that the commission hold a notice and comment hearing on the permit application. The new section states that any hearing request must be submitted during the 30-day

comment period, which ends 30 days after publication of the notice of intent. The new section specifies the procedures and requirements for the hearing and the rights of affected persons.

Adopted new §116.796, Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits, specifies the applicability of the hearing requirements in the section, the responsibilities of the commission in determining whether or not to hold a hearing, the applicant's responsibilities if a hearing is to be held, and the requirements regarding submission of oral or written statements and data concerning a draft permit. TCAA, §382.05181(h) provides that applications for pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits are subject to the public notice and hearing requirements of §382.05191. TCAA, §382.05191 provides that public participation for initial issuance of a permit under §§382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 will be done in the manner of TCAA, §382.0561, concerning Federal Operating Permit; Hearing, and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing.

New §116.797, Notice of Final Action on Existing Facility Flexible Permit Applications, is adopted with changes to the proposed text. The adopted new section specifies the commission's responsibilities for sending notice of the final action on an application for an existing facility flexible permit and the information that the commission must include in the notice. The new section requires the commission to individually notify persons who commented during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The proposed rule stated that the notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing and for judicial review. Because, in §116.807, the commission is now delegating to the executive director the authority to take any action on a permit issued under this division, this section now requires that the notice state that any person affected by the decision of the executive director may file a motion to overturn rather than a petition for rehearing.

Adopted new §116.798, Permit Fee, establishes a permit fee of $450 for persons applying for a permit under Subchapter H, Division 3, unless the facility is a small business stationary source facility, as defined by TCAA, §382.0365(h), and then the fee would be $100. These fees will allow the commission to partially offset the cost of processing the applications. The new section also establishes requirements for payment and return of fees. TCAA, §382.062 authorizes the commission to establish fees for permits.

Adopted new §116.799, General and Special Conditions, requires that permit holders comply with any and all general and special conditions that the existing facility flexible permit may contain. The new section states that upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160 - 116.163 (relating to Nonattainment Review or Prevention of Significant Deterioration Review), or Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard permit or a permit by rule under Chapter 106. Additionally, the new section specifies that a pollutant specific emission cap or multiple emission caps and/or individual emission limitations shall be established for each air contaminant for all facilities authorized by the permit. The new section also lists the general conditions applicable to every existing facility flexible permit and states that there may be additional special conditions attached to an existing facility flexible permit upon issuance or amendment of the permit that may be more restrictive than the requirements of the section. These requirements are consistent with the requirements for flexible permits issued under Subchapter G.

Adopted new §116.800, Emission Caps and Individual Emission Limitations, specifies the criteria for establishing the emission cap for a specific pollutant and the criteria for establishing an individual emission limitation for a pollutant. The new section also specifies the requirements for readjustment of the emission cap when a facility is shut down, a new facility is brought into the permit, or a facility becomes subject to any new state or federal regulation which would lower emissions or require an emissions reduction. These requirements are consistent with the requirements for flexible permits issued under Subchapter G, except that there is not an insignificant emission factor specified for grandfathered facilities. The commission does not believe that an insignificant emission factor would be necessary or appropriate for grandfathered facilities, since use of the ten-year-old BACT control method will provide sufficient flexibility for these facilities.

Adopted new §116.801, Implementation Schedule for Additional Controls, explains the implementation schedule to be contained in a permit if the installation of additional controls is required for a grandfathered facility to meet an emission cap for an air contaminant. As required by TCAA, §382.05181, installation of required controls must be completed before March 1, 2007, for facilities located in the East Texas region, and before March 1, 2008, for facilities located in the West Texas region or El Paso County. The new section also specifies how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule in the permit.

Adopted new §116.802, Significant Emission Increase, defines when an increase in emissions from operational or physical changes at an existing facility covered by an existing facility flexible permit will be considered insignificant for the purposes of state new source review under Subchapter H, and will not require a permit amendment. The new section states that any increase in emissions from a new facility or emissions of an air contaminant not previously emitted by an existing facility will require a permit amendment.

Adopted new §116.804, Limitation on Physical and Operational Changes, states that neither operational nor physical changes at an account may result in an increase in actual emissions at facilities not covered by the existing facility flexible permit unless those affected facilities are authorized in accordance with §116.110, Applicability.

Adopted new §116.805, Amendments and Alterations for Existing Facility Flexible Permits, specifies that amendments and alterations for existing facility flexible permits are subject to the requirements of Subchapter B.

Adopted new §116.806, Existing Facility Flexible Permit Renewal, states that existing facility flexible permits will be renewed in accordance with the requirements of Subchapter D, Permit Renewals, consistent with the permit requirements of Chapter 116.

New §116.807, Delegation, is adopted with changes to the proposed text. In adopted new §116.807 the commission delegates to the executive director the authority to take any action on a permit issued under Subchapter H, Division 3 consistent with the authority of TCAA, §382.061, and TWC, §5.122. This delegation will allow for efficient processing of permit applications.

With the addition of three new divisions to this subchapter, the existing requirements for VERPs have been placed under a new Division 4. There have been no changes to the requirements for VERPs.

Subchapter I, Electric Generating Facility Permits

The adopted amendments to Subchapter I implement the portions of TCAA, §382.05185, which create a new EGF permit. The EGF permit will allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for a permit for: 1) generators that do not generate electric energy for compensation and are not used more than 10% of the annual operating schedule; and 2) auxiliary fossil-fuel-fired combustion facilities that do not generate electric energy and do not emit more than 100 tpy of any air contaminant. The adopted changes will also allow coal-fired EGFs which were required to apply for a permit under SB 7, 76th Legislature to apply for an EGF permit for criteria pollutants other than NO_x, SO_2, and PM as it relates to opacity. In addition, the amendments to Subchapter I provide that gas-fired EGFs which were required to be permitted under SB 7, 76th Legislature or were exempt from the requirement to apply for such a permit are considered permitted for all air contaminants.

The adopted amendments to Subchapter I include revising the subchapter title to Electric Generating Facility Permits.

The adopted amendments to §116.910, Applicability, allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for an EGF permit for certain auxiliary generators or other combustion equipment. The amendments delete the old subsection (e) as unnecessary since this section deals with applicability and the pollutants covered by the permit are identified in §116.119 and the permit document itself. The changes adopted in subsection (f) clarify that EGFs generating electric energy primarily for internal use are not required to obtain a permit under this subchapter. However, since these internal use generators are grandfathered, TCAA, §382.05181, as codified in §116.770, requires that the owners or operators obtain authorization from the commission. The facility must obtain a permit under either Chapter 116 or qualify for a permit by rule under Chapter 106.

The amendments to §116.911, Electric Generating Facility Permit Application, are adopted with changes to the proposed text. The adopted amendments clarify that gas-fired EGFs which were required to be permitted under SB 7, 76th Legislature or were exempt from the requirement to apply for such a permit are considered permitted under the TCAA for all air contaminants. The adopted additions to this section also allow the owners or operators of EGFs who have already applied for a permit required by SB 7, 76th Legislature to apply for a permit for generators that do not generate electricity for compensation and are not used more than 10% of the normal operating schedule, or for other combustion equipment that does not generate electric energy and does not emit more than 100 tpy of any air contaminant. The adopted amendments to this section allow coal-fired EGFs which were required to apply for a permit under SB 7, 76th Legislature to apply for an EGF permit for criteria pollutants other than NO_x, SO_2, and PM as it relates to opacity. The adopted additions to this section identify the date by which applications must be filed and state that emissions of air contaminants from auxiliary generators or other combustion equipment that is permitted must be included in the allowance trading program created by SB 7, 76th Legislature. The commission revised §116.911(d) and (e) for clarification and to correct a typographical error.

The amendments to §116.913, General and Special Conditions, are adopted with changes to the proposed text. The adopted amendments update the conditions of any permit issued under this subchapter, including the pollutants or allowances that may be authorized for each permit and the requirements of the SB 7 allowance trading program for the additional equipment which may be permitted under this subchapter. Existing paragraph (2) of this section is deleted as it is no longer necessary because HB 2912 either considers these additional air contaminants already permitted for gas-fired EGFs which have obtained or applied for a permit under SB 7, or provides for the permitting of the additional criteria pollutants for coal-fired EGFs which have obtained or applied for a SB 7 permit. Subsequent paragraphs have been renumbered. Permits for certain grandfathered coal-fired EGFs and certain grandfathered facilities located at EGF sites authorized under §116.917 will contain additional general and special conditions, as identified in adopted new §116.918. The proposed rule established ASTM Grade Number 2 fuel oil containing not more than 0.3% sulfur by weight as acceptable. The commission stated in the preamble to the proposed rule that staff was continuing to analyze other fuel oil grades and refine the modeling analysis. As a result of this additional analysis, the commission has determined that any ASTM grade of fuel oil with a sulfur content of 0.7% by weight or less is acceptable, except in those areas where a lower sulfur content is required by 30 TAC Chapter 112. This limitation has been added to the general conditions in §116.913 along with a clarification that the burning of waste or used oils is not authorized under Subchapter I. The commission has also added a general condition to §116.913 requiring the EGF to keep records of fuel oil burning and submit those records with the report required under §101.336(b). Additionally, the commission made a minor language clarification in §116.913(a)(2) and clarified the language in §116.913(a)(1)(E) to apply only to criteria pollutants instead of all air contaminants in order to be consistent with TCAA, §382.05185.

New §116.917, Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites, is adopted with changes to the proposed text. The adopted new section outlines the application requirements for grandfathered coal-fired EGFs which choose to permit their additional criteria pollutants, and the auxiliary generators and the additional combustion equipment which can now be permitted under this subchapter. In order to be consistent with the current review process for permits and applicable federal requirements,

§116.917 requires the owner or operator of a grandfathered facility applying for an EGF permit to be able to demonstrate that the facility meets applicable federal NSPS and NESHAP. Facilities must be able to meet performance standards specified in the application and may be required to provide information that demonstrates ongoing compliance after the permit is issued. If applicable, facilities would be required to comply with PSD and nonattainment review as specified in Chapter 116, Subchapter B. Since grandfathered facilities must comply with federal requirements, if applicable, it is appropriate to ensure that these facilities are in compliance with federal requirements in the process of reviewing applications. These sections also require the facility to submit air dispersion modeling if a more refined health effects review is required. Finally, these sections require the application to identify each grandfathered facility to be included in the permit, identify the air contaminants emitted, and provide emission rate calculations. The commission revised an incorrect reference to §116.611(f)(1) and (2) to correctly reference §116.911(f)(1) and (2).

Adopted new §116.918, Additional General and Special Conditions for Grandfathered Coal- Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites, identifies some of the general and special conditions which may be included in any permit issued under the adopted §116.917 and states that there may be additional special conditions attached to a permit upon issuance of the permit that may be more restrictive than the requirements of the section. Additional general and special conditions are required by §116.913. Permit holders are required to comply with any and all general and special conditions that the permit may contain. These requirements are consistent with the requirements for permits issued under Chapter 116.

The adopted amendments to §116.921, Notice and Comment Hearings for Initial Issuance, are necessary to include the auxiliary generators and additional combustion equipment described in adopted §116.911(f), which may be permitted under this subchapter, as facilities subject to the notice and hearing requirements of this section. These changes implement the requirement contained in TCAA, §382.05191.

Adopted new §116.926, Permit Fee, is necessary to allow the commission to collect application fees for any permits issued in accordance with §116.917. These fees will allow the commission to partially offset the cost of processing the applications. TCAA, §382.062 authorizes the commission to establish fees for permits.

New §116.928, Delegation, is adopted with changes to the proposed text. In new §116.928, the commission delegates to the executive director the authority to take any action on a permit issued under this subchapter, consistent with the authority of TCAA, §382.061, and TWC, §5.122. This delegation will allow for efficient processing of permit applications. In this section the commission also provides that because of this delegation to the executive director, the notice of final action under §116.922 will now notify the persons affected by the executive director's decision of the opportunity to file a motion to overturn rather than a petition for rehearing. It was necessary to add this language to §116.928 because the commission did not originally propose changes to §116.922 (relating to Notice of Final Action).

The adopted amendments to §116.930, Modifications, include a revision of the section title to "Amendments and Alterations of Permits Issued Under this Subchapter." The adopted amendments are intended to clarify that the owner or operator of a facility with a permit issued under this subchapter must comply with the requirements of Subchapter B prior to beginning the construction of the modification and that any required alteration or amendment will follow the procedures contained in Subchapter B.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the changes to this chapter needed to implement the substantive permitting requirements of HB 2912, §§5.02 - 5.04 meet the definition of a "major environmental rule" as defined in that statute. However, the adopted rulemaking implementing HB 2914, §78 does not meet the definition of a major environmental rule. The 77th Legislature amended THSC to require that all grandfathered facilities obtain permits. These rules implement the comprehensive permitting system created by HB 2912, including four different types of permits which will cover all grandfathered facilities, and provide for potential emission reductions. The rules implementing HB 2914 specify the procedures and criteria governing reimbursement from the Emissions Reductions Incentives Account, established to assist certain owners or operators making reductions in emissions from grandfathered reciprocating internal combustion engines associated with pipelines.

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.

Although the adopted rules to implement the HB 2912 sections are intended to protect the environment or reduce risks to human health from environmental exposure, they may have adverse effects on the economy, productivity, competition, or jobs of the state or a sector of the state since they require mandatory permitting or shut down of certain grandfathered facilities. However, the analysis required by Texas Government Code, §2001.0225(c) does not apply because the adopted rules do not meet any of the four applicability requirements of a major environmental rule. The adopted 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 adopt a rule solely under the general powers of the agency. The rules are adopted specifically to comply with HB 2912 and related provisions of TCAA, and do not exceed the requirements of either.

The adopted rules to implement the HB 2914 sections are intended to protect the environment or reduce risks to human health from environmental exposure. Because this is an incentive program designed to provide financial assistance to certain facilities, the adopted rules will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rules implementing the HB 2914 sections do not fit the definition of a major environmental rule, and the analysis required by §2001.0225(c) does not apply.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the adopted rules. The purpose of the adopted rules is to fulfill the commission's obligation to implement HB 2912, §§5.02 -

5.04 and HB 2914, §78, concerning grandfathered facilities. The adopted rules advance this purpose by creating a comprehensive permitting system including four different types of permits which cover all grandfathered facilities, and provide the potential for emission reductions. The rules also contain procedures and criteria governing partial reimbursement from the Emissions Reductions Incentives Account, established to assist certain owners or operators making reductions in emissions from grandfathered reciprocating internal combustion engines associated with pipelines.

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicated that Texas Government Code, Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Section 2007.003(b)(13) states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. In addition, these rules fulfill an obligation mandated by federal law. The adopted rules implement requirements of 42 United States Code (USC), §7410. The reductions in NO_x and VOC significantly advance a health and safety purpose by assisting the state's efforts to attain the ozone national ambient air quality standards (NAAQS) set by the EPA under 42 USC, §7409, for nonattainment areas of the state and maintain the quality of the state's air in attainment areas. The action is mandated by federal law because the rules will be submitted for EPA approval as part of the SIP. Texas Government Code, Chapter 2007 also does not apply because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Reductions required by these rules will be no greater than those required by HB 2912. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Adoption and enforcement of these rules will not burden private real property. The adopted 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 adopted rules do not meet the definition of a taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the 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 rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking requires the owners or operators of all previously grandfathered facilities to obtain a permit for those facilities in order to continue to operate. The permits issued for these facilities are expected to result in reduced emissions of air contaminants and improved compliance with state and federal air pollution control requirements. Therefore, this rulemaking is consistent with the applicable policy and goal.

No comments on the CMP consistency determination were received.

HEARING AND COMMENTERS

Public hearings on the proposal were held at the following times and locations: January 22, 2002, 7:00 p.m., Tyler Junior College Regional Training and Development Center, Room 104, 1530 South Southwest Loop 323, Tyler; January 23, 2002, 7:00 p.m., City of Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; January 24, 2002, 7:00 p.m., City of Odessa City Council Chambers, 5th Floor, 411 West 8th Street, Odessa; January 28, 2002, 6:30 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and January 29, 2002, 2:00 p.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building F, Room 2210, Austin.

The commission received comments from the following organizations and companies: Birds-i Network (BIN); Southeast Coalition of Civic Clubs (SCCC); St. Francis Xavier Catholic Church (St. Francis); League of Women Voters of Dallas (LOWV); TXU Business Services Company, on behalf of TXU Energy (TXU); Texas Oil & Gas Association (TxOGA); Texas Campaign for the Environment (TCE); Sierra Club Houston Regional Group (HSC); Galveston-Houston Association for Smog Prevention (GHASP); United States Environmental Protection Agency (EPA); Environmental Defense (EDef); Downwinders at Risk/Blue Skies Alliance (DAR/BSA); Association of Texas Intrastate Natural Gas Pipelines/Gas Processors Association (ATINGP/GPA); Association of Electric Companies of Texas (AECT); and City Public Service of San Antonio (CPS).

In addition, the commission received comments from, or on behalf of, the following elected officials: Mr. Larry Green representing the Honorable Sheila Jackson Lee, U.S. House of Representatives, Eighteenth District of Texas; House Committee on Environmental Regulation, Texas House of Representatives, the Honorable Warren Chisum, Chairman; the Honorable Warren Chisum, District 88, Texas House of Representatives; the Honorable Lon Burnam, District 90, Fort Worth, Texas House of Representatives; the Honorable Al Edwards, District 146, Houston, Texas House of Representatives; the Honorable Lee Brown, Mayor, City of Houston; and the Honorable Ada Edwards, Council Member, District D, City of Houston.

SCCC, St. Francis, Larry Green (Congresswoman Sheila Jackson Lee's office), Representative Edwards, Houston City Council Member Edwards, GHASP, EPA, and Lee P. Brown, Mayor,

City of Houston, generally supported the proposed rulemaking. All commenters suggested changes to some portion of the proposed rules.

TXU supported the comments of AECT. GHASP expressed support for the comments expressed by others regarding the details of the rules relating to grandfathered pipeline facilities. Representative Lon Burnam expressed support for the comments submitted by the Houston Sierra Club and the Texas Campaign for the Environment.

RESPONSE TO COMMENTS

SCCC, St. Francis, Larry Green (Congresswoman Sheila Jackson Lee's office), Representative Edwards, Houston City Council Member Edwards, GHASP, EPA, and Lee P. Brown, Mayor, City of Houston, expressed general support for the rule.

The commission appreciates the support.

GHASP commented that any good cause extensions for the installation of controls should not be automatic, and the duration of the extensions should be minimized. TCE commented that the commission should provide definitions or conditions that justify the extension. Lee P. Brown, Mayor, City of Houston urged the commission to complete the review of permit applications within six to 12 months after receipt.

The commission appreciates the comments, and has designated the proposed §116.771 as subsection (a) and added new language under subsection (b) to provide for the possible good cause extensions. The commission is committed to completing the permit review for these facilities within the required time frame. The commission will make every effort to review and act on all permit applications submitted in accordance with these rules within one year from the date of receipt of the administratively complete application.

TCE expressed concern that many aspects of the implementation of the legislation are being left to guidance documents and that the public has a limited role in the guidance document process, and suggested that a balanced work group be used to develop the guidance documents.

The commission has made no change in response to this comment. The development of guidance documents will be conducted through a balanced stakeholder process, which allows for public review and comment from interested persons.

HSC and DAR/BSA commented that the proposed rules should specify the details of the health effects review, so that the public may review and comment on the criteria. HSC also commented that they wanted specific criteria in the rules to prevent the commission from acting arbitrarily and capriciously by treating some facilities in a more beneficial manner than others. ATINGP/GPA expressed support for the commission's proposals regarding health effects review guidance and encouraged the commission to ensure that the extent and nature of the review corresponds to the potential health risks from a particular facility.

The commission has made no change in response to these comments. The development of the guidance for health effects review will be conducted through a balanced stakeholder process, which allows for public review and comment from interested persons. The commission does not agree that the use of a guidance document would allow the commission to act in an arbitrary and capricious manner with respect to the review for any permit. The commission appreciates the support for the development of the health effects review guidance, and looks forward to working with all stakeholders in its development.

TCE and GHASP commented that the health effects review should include a review of complaints against the facility. Additionally, GHASP commented that health effects reviews should include a review of notices of violation, and any other compliance information that might indicate past problems at a site. GHASP commented that adding these items to the health effects review would be particularly important for facilities that will not be required to make pollution reductions in exchange for a permit. TCE also stated that they want to make sure that the compliance history of grandfathered plants is thoroughly reviewed, including, but not limited to, violations and complaints, before permits are issued to grandfathered facilities - small and large.

The commission has made no change in response to this comment. The commission notes that the classification and use of compliance history in all types of permit reviews, including permits for grandfathered facilities, is currently being addressed in separate rulemakings. Notices of violation are now included in the components of a person's compliance history.

TCE commented that the rule should specifically address the prevention of public nuisance and the prevention of immediate threat to life or property in addition to the rule inclusion for prevention of real and substantial threat to public health and safety.

The commission has made no change in response to the comment. Generally, the health effects reviews conducted by the commission will consider the nuisance effects from compounds either through a review of the compliance history of the facility or through a detailed look at the off-property impacts of the emissions from the facility. When the commission conducts a detailed modeling analysis, the off-property impacts are compared to the effects screening level (ESL) of the compound. The ESL for each compound is based on the nuisance potential or the potential for adverse health effects, whichever is lower. In addition, the commission's rule regarding nuisance, 30 TAC §101.4, provides adequate enforcement authority regarding nuisance conditions. The commission also notes that private citizens may have other private remedies regarding nuisance conditions. Immediate threats to life and property from potential acute exposures will also be considered during the permit review.

GHASP, DAR/BSA, and TCE commented that the $450 fee is too low for large businesses, but support the low fee for small business sources. HSC also commented that the $450 fee was too low, and that the fee should be a minimum of $1,000. TCE commented that there should be a higher fee for companies that did not participate in the VERP program. TCE suggested that the commission use the existing fee structure for new and modified sources. TCE suggested that the commission consider hiring persons with accounting backgrounds, rather than engineering backgrounds, to determine the appropriate value of the facilities being permitted. TCE also suggested that the commission not charge a single fee for a permit for numerous facilities located on a pipeline.

The commission has made no change in response to this comment. The commission does not agree that it is appropriate to use the existing fee structure for facilities that were constructed over 30 years ago, and that have not been modified. The permitting of these facilities is not anticipated to require as many

resources as reviewing a permit for new construction. The commission notes, however, that fees for the permitting of grandfathered facilities have been included in a review of permit fees currently being conducted to assess whether changes should be proposed to permit fees in general. The commission will charge a fee for each permit application reviewed. Even if an application for a permit includes multiple facilities associated with a pipeline, the fee will be a single application fee.

TCE and DAR/BSA questioned how the commission will compile an accurate listing of the additional large, small, and micro-business grandfathered facilities not included in the 1997 emissions inventory. TCE and DAR/BSA also questioned how the addition of these facilities to the inventory will affect the SIP.

The commission has made no change in response to these comments. The commission will not attempt to compile a list of the additional large, small, and micro-business grandfathered facilities which are not included in the 1997 emissions inventory. The commission will make efforts to outreach to as many businesses as possible to make sure they are aware that any grandfathered facilities they may have will need to be permitted. However, the emissions from most of these businesses are already accounted for in the inventory, and thus the SIP, by established procedures used to estimate the emissions from area sources. Thus, there should be little or no impact on the SIP.

EPA commented that the proposed §§116.771, 116.776, 116.779, 116.794, and 116.801 should clarify that control measures and implementation schedules be agreed upon prior to permit issuance and included in permits.

The commission agrees that control measures and implementation schedules should be codified in the permit, when controls are required. The proposed §116.771 specifies that if any additional controls are required by a permit for a grandfathered facility, the permit will specify a schedule for the implementation of those controls. This requirement applies to any permit issued under Subchapter H.

EPA commented that the proposed rules provided that notice and comment hearing requirements apply only to the initial issuance of pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits. EPA states that the commission should require public notice for revisions and modifications of pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits to meet 40 CFR §51.161.

The commission has made no change in response to this comment. HB 2912 provided that public participation for *initial issuance* of pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits, would be conducted in the same manner as public participation for federal operating permits. Therefore, for *initial issuance*, public participation includes a requirement for publication of newspaper notice, signposting, and an opportunity to request a notice and comment hearing. However, HB 2912 provided that for *modifications and renewals* of pipeline facilities permits, existing facility permits, existing facility flexible permits, and EGF permits must comply with TCAA, §382.0518, which requires public participation to include publication of newspaper notice, signposting, and an opportunity to request a contested case hearing. Proposed and adopted §§116.787, 116.788, 116.805, and 116.806 require that modifications and renewals of small business stationary source permits, pipeline facilities permits, existing facility permits, and existing facility flexible permits comply with Chapter 116, Subchapters B and D, and therefore, meet the requirements of 40 CFR §51.161. Adopted §116.930 requires that modifications of EGF permits comply with Subchapter B and existing §116.931 requires that renewals of EGF permits comply with Subchapter D, thus also satisfying the requirements of 40 CFR §51.161 for EGF permits.

EPA commented that proposed §§116.786(b)(2), 116.799(c)(2), and 116.918(b)(2) do not meet the requirements of 40 CFR §51.212(c), which provides that compliance must be determined by methods in 40 CFR 51 Appendix M; 40 CFR 60 Appendix A; or as approved by the EPA administrator.

The commission has made no change in response to this comment. The rules as written continue the current practice of reviewing any alternate method requests and sending recommendations to EPA for approval as appropriate. These rules and procedures satisfy the requirements of 40 CFR §51.212(c).

LOWV expressed concern regarding whether the hearing process has any impact on permit issuance. LOWV also stated that air contaminants are carried by prevailing winds, can be carried far away from sources, and the wind currents are not always the same. Lastly, LOWV commented that the agency response to this issue has been very weak and industries do not have the right to pollute the air. LOWV stated that citizens have the right to breathe clean air.

The commission has made no changes to the rule in response to these comments. The commission supports input from the public in all permitting decisions through both public comment and the opportunity to request a hearing where authorized by statute. The commission agrees that certain air contaminants may be carried some distance by prevailing winds. The commission assesses the impact of these air contaminants on downwind areas as part of the permit review process.

TXU commented that the permitting of existing facilities is a new process and does not necessarily have to be consistent with the processes for permitting new and modified facilities. TXU stated that the permitting process for grandfathered facilities should adhere closely to what is authorized in SB 7 and HB 2912 and not add on traditional permitting procedures.

The commission has made no change in response to this comment. The commission agrees that HB 2912 provides specific permitting requirements for grandfathered facilities in acknowledgment of the fact that these facilities have already been constructed. However, HB 2912 also provides that review and renewal of these permits be completed under existing Chapter 116 procedures. This requires that the commission harmonize the review of grandfathered facilities in the context of the existing structure for permitting new and modified facilities.

TxOGA requested that the commission create a "regional permit for aggregated facilities" for grandfathered tank or pipeline facilities other than engines. TxOGA's proposed regional permit would require that the aggregate allowable emissions meet the equivalent overall emission limit of current BACT.

The commission appreciates the suggestion; however, this suggestion is beyond the scope of this rulemaking, so no change has been made in response to this comment.

TCE and DAR/BSA requested that the commission change the word "may" to "shall" in the sections of the rules relating to the provision for measurement of air contaminants, including installation of sampling ports and sampling platforms. In addition, TCE

comments that the rules do not include requirements for certified monitoring data.

The commission has made no change in response to these comments. These general conditions are included in all permits. The commission does not agree that it is appropriate to require the installation of sampling ports and sampling platforms for all facilities. In those cases where the permit engineer determines that it is appropriate to require sampling and/or monitoring, the permit will contain specific conditions requiring the provisions for these activities. In addition, permit engineers are aware of the periodic monitoring and compliance assurance monitoring requirements of Title V and permits for grandfathered facilities will satisfy those requirements where appropriate.

TCE and DAR/BSA supported the rule language stating that there may be special conditions included in the permit that may be more restrictive than the requirements of the section.

The commission appreciates the support.

HSC commented that the commission should define the criteria it uses to determine when the basis of a hearing request by a person who may be affected (by a facility requesting a permit) is determined to be unreasonable. HSC's perspective is that any person who is breathing or may breathe the air contaminants from a facility is affected and the commission does not have the right to withhold from any person the right to have a public hearing.

The commission has made no changes in response to these comments. The public notice provisions in the adopted rules implement the requirements of HB 2912, §§5.02 - 5.05 to provide for public notice and an opportunity for a notice and comment hearing, in the same manner as provided for federal operating permits under TCAA, §382.0561. Section 382.0561 provides that the commission is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable. Therefore, reasonableness is the statutory standard by which requests for hearings are required to be judged by the commission. Although the commission believes that "reasonableness" is a term that is circumstantial and not required to be defined by the commission, the factors relevant to a determination of reasonableness have previously been discussed in the commission's procedural rules, and the commission could use those factors as guidance.

EPA commented that these regional reductions will not only result in improvements to air quality near the specific facilities, but should also provide benefits in reducing ozone levels in the nonattainment and near nonattainment areas, as well as reduce regional haze.

The commission appreciates the support.

EPA commented that §116.772 should clarify that a source which shuts down and then restarts must be re-permitted under Chapter 116, Subchapter B or under Chapter 106.

The commission has made no change in response to this comment. The proposed §116.772(c) requires that the owner or operator of a source which is shut down and which the owner or operator then elects to restart must obtain authorization under Chapter 116 or Chapter 106 prior to operating the facility. The permitting is not limited to Chapter 116, Subchapter B. For instance, if an owner or operator of a grandfathered facility located in West Texas shuts the facility down in 2002, but elects to re-start the facility, the owner or operator may submit an application for a grandfathered facility permit under Subchapter H (except for Division 4 - VERP) prior to September 1, 2004.

EPA asked if Form PI-1GSD, Notice of Shutdown, along with application forms for Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits were available for public review and comment.

The forms to implement these grandfather permitting rules are being developed. The forms will be made available to the public when they have been completed, and the commission always welcomes public comment on how forms and guidance can be improved.

EPA commented that §116.786(b)(3) should also discuss public availability of records, and that records should be available to the public upon request unless determined to be confidential business information under 40 CFR 2.

The commission has made no change in response to this comment. The commission agrees that public availability is an important component of the permitting process, and has implemented procedural rules, 30 TAC §1.5, to ensure that the records of the agency are properly available to the public, subject to appropriate confidentiality restrictions. The commission provides information to the public, subject to the limitations provided in TCAA, the Texas Public Information Act, and copyright law.

EPA commented that §116.786(c)(2)(A), special conditions for written approval, should provide that the public record for any permit application should document the basis for requiring, or not requiring, prior written approval from the executive director.

The commission has made no change in response to this comment. The proposed §116.786(c)(2)(B) identifies the reasons why the commission may include a provision requiring prior written approval before constructing a source under certain authorizations. The basis for including such a condition in a permit will be identified in the technical review of the permit application. This technical review is available in the permit file available to the public.

EPA commented that permits for coal-fired EGFs and certain grandfathered facilities located at EGF sites as identified in §116.917 should contain provisions for measuring the emissions of air contaminants as determined by the commission. Specifically, EPA commented with regard to §116.917(a)(6), that the commission should require both initial and ongoing compliance measures (for example, periodic monitoring), in order to ensure initial and ongoing compliance. EPA commented that the pipeline facilities permit needs to specify the method for determining how the source will demonstrate achievement of 50% and 20% reduction, respectively, on a continual basis. DAR/BSA also commented that the emissions from these pipeline facilities should be reliably monitored and tracked to ensure greatest reductions.

The commission has made no change in response to these comments. Permits issued by the commission include any appropriate measures needed to ensure initial and ongoing compliance with the permit and any underlying standards. In addition, most, if not all, of these facilities are required to obtain a Title V permit and are subject to acid rain permitting requirements. The commission is required to place the appropriate periodic monitoring and compliance assurance monitoring requirements in these permits.

EDef stated that the commission should ensure that the owners and operators of facilities applying for a permit under these proposed rules cannot use the permit to make operational or physical changes such as increasing the utilization, capacity, or throughput of existing units without going through the normal New Source Review (NSR) permitting process. EDef stated that the commission should add a requirement that the maximum capacity under any grandfathered permit may not significantly exceed historical levels.

The owner or operator of a facility for which an application for a grandfathered facility permit is submitted should be able to document that the facility is truly a grandfathered facility and thus eligible for one of the four new types of permits for grandfathered facilities. The commission staff will review this information along with the remainder of the application information (including utilization, capacity, and throughput information) to ensure that the facility qualifies for the type of permit for which the application was submitted. In those cases where applications are submitted for facilities that are not grandfathered, or for which the applicant is requesting physical or operational changes to the facility that would constitute a modification the applicant will be directed to submit the appropriate type of NSR permit application.

EDef requested that the commission require in the final rules a certification, signed by a responsible official that the facility has not been modified since 1971.

The commission has made no change in response to this comment. The commission does not believe that a certification of grandfathered status is necessary. As mentioned previously, the owner or operator of the grandfathered facility must be able to provide documentation regarding the grandfathered status of the facility being permitted. The commission also notes that for those facilities which have submitted Title V permit applications, the owner or operator has provided information regarding the grandfathered status of the facilities with applicable requirements at the site and has certified that the information provided is true and accurate.

DAR/BSA commented that the proposed rule is of concern since a recently released EPA study of MOBILE6 projects that vehicles will emit 90% more NO_x and 21% more VOC in 2003 than previously documented, which will result in further reductions necessary for nonattainment areas to meet federal law and protect the public from harmful air pollution.

The commission has made no change in response to this comment. If the new mobile source model predicts more emissions than the previous model, the commission, along with the local stakeholders, may be required to identify more reductions in NO_x and/or VOC emissions in order to reach attainment of the NAAQS in the nonattainment areas. The need for additional reductions will be evaluated after the results from the new mobile source model are evaluated.

ATINGP/GPA requested that the commission establish a procedure whereby all permit applications for grandfathered facilities at the same account be processed at the same time.

The commission has made no change in response to this comment. The commission will work with any applicant and is developing internal procedures to coordinate the review and issuance of permits to the extent that the requirements are similar.

For example: If the owner or operator applies for both an existing facility permit and a pipeline facilities permit, the commission may be able to coordinate the review for both applications to provide for a single public notice for both applications, concurrent review of the applications, and issuance of a single permit. Such coordination of review and issuance will require the assistance of the applicant. Both applications must be submitted together and must clearly identify the request for a single permit number and combined public notice. The applicant must also ensure that any deficiencies identified with either application are addressed quickly so that the coordinated review is not jeopardized.

Lee P. Brown, Mayor, City of Houston urged the commission to quantify the emissions reductions from both permitting of grandfathered facilities and fewer industrial upsets resulting from the implementation of HB 2912 as soon as possible. Additionally, the City of Houston urged the commission to complete air quality modeling to determine resulting ozone and fine particle reductions to allow the City of Houston to work with regional stakeholders in developing strategies to avoid nonattainment for the forthcoming fine particle standard.

The commission has made no change in response to these comments. Although the comments address areas beyond the scope of this rulemaking, the commission appreciates the comments and provides the following response.

The commission agrees that emission reductions of ozone precursors resulting from the implementation of HB 2912 should be quantified. These emission reductions will be quantified as part of the ozone modeling for the Houston/Galveston Area's mid-course review. Phase I of the modeling for the midcourse review is currently in progress.

The commenter makes reference to "the forthcoming fine particle standard." The commission wishes to clarify that the federal fine particle ($PM_{2.5}$) standards were promulgated in 1997. However, nonattainment designations for $PM_{2.5}$ have not yet been made by the state and the EPA. Pending further guidance from EPA regarding the implementation of the $PM_{2.5}$ standard, such designations, if deemed appropriate from the monitoring data, could be made as early as 2003. The designations would be based on monitoring data from the three- year period 2000 through 2002.

The commenter requests that the commission complete $PM_{2.5}$ air quality modeling to allow the City of Houston to work with regional stakeholders in developing strategies to avoid $PM_{2.5}$ nonattainment in the Houston area. The commission does not plan to conduct $PM_{2.5}$ modeling in advance of any $PM_{2.5}$ nonattainment designations. However, the commission would conduct such modeling should the Houston area be designated nonattainment, as part of the development of an attainment demonstration SIP.

The commission acknowledges the program begun in late 1999 by the City of Houston and stakeholders to help the area avoid a $PM_{2.5}$ nonattainment designation. Participants in this program developed and implemented a number of early $PM_{2.5}$ control strategies.

In 2000, a field study was conducted by universities, with assistance from the commission, to better understand the formation and transport of $PM_{2.5}$ in the Houston area. Data from the study are being analyzed, and will provide an enhanced scientific basis for evaluating the effectiveness of potential controls should the area be designated nonattainment for $PM_{2.5}$.

The representative from the Birds-i Network commented regarding personal observations of increased incidence of diabetes,

lupus, and other diseases with mysterious lupus-like symptoms, and other various birth defects.

Birds-i Network also expressed concern regarding mercury, and noted that EPA provides an annual report to Congress regarding mercury that appears to indicate that mercury from utility emissions is responsible for birth defects and immune illnesses.

Birds-i Network commented that all lignite fired plants have no filters on the smokestacks.

Birds-i Network commented that a federal grand jury investigating the Rocky Flats nuclear reservation in Colorado issued more than 60 criminal indictments for how that plant was being operated, and that the federal grand jury should be convened to take testimony from utility officials about what occurred during the nineties, regarding mercury.

The commission has made no change in response to these comments. The 1990 amendments to the Federal Clean Air Act identified 189 hazardous air pollutants (HAPs). Congress directed EPA to identify source categories which emit significant amounts of these HAPs and further directed them to establish standards requiring reductions in the emissions of these HAPs. One of the HAPs identified by Congress was mercury, and one of the source categories identified by EPA as emitting mercury was coal-fired EGFs. As the commission discussed elsewhere in this preamble, the commission expects that EPA will be addressing mercury emissions from EGFs in the near future. The commission has no data to support the comments regarding the alleged increases in various diseases or birth defects. The commission has no information regarding events at the Rocky Flats nuclear reservation in Colorado and the commission does not have authority to convene a federal grand jury regarding any matter.

EPA requested additional discussion of what is a "Small Business" under TCAA, §382.014.

The commission has made no change in response to this comment. TCAA, §382.014 does not define "Small Business." TCAA, §382.014 enables the commission to require a person whose activities cause emissions of air contaminants to submit information the commission needs in order to develop an inventory of emissions in Texas. The requirement to submit this information needed to develop the inventory is based on the level of emissions from the facilities located at the account (site), and applies to any person or company regardless of whether or not the person or company is a small business. As stated in §116.774(a), small business is defined in TCAA, §382.0365(h).

TCE and DAR/BSA stated that industry representatives testified at legislative hearings that they do not have exact emission figures for all pipeline facilities. TCE and DAR/BSA are concerned that the owners or operators of pipeline facilities that apply for a small business stationary source permit may indeed be above the 50 tpy threshold of any regulated air pollutant or may emit more than 75 tpy of all regulated air pollutants. TCE and DAR/BSA are concerned that these pipeline facilities may be improperly exempt from having to obtain an existing source permit.

The commission has made no changes in response to this comment. The commission anticipates that most pipeline facilities will receive pipeline facilities permits. However, there may be some pipeline facilities that will qualify for a small business stationary source permit. The commission will review each application to ensure that it meets the eligibility criteria, including the emission limits to be considered a small business source. Any applicant who does not meet the eligibility criteria for the type of application submitted will be required to submit a new application appropriate for the facility.

TCE and DAR/BSA commented that the proposed rules will not necessarily result in significant reductions in emissions, and therefore, do not accurately reflect legislative intent. TCE commented that the proposed rules require a reduction in the rate of emissions for a pipeline facilities permit rather than a reduction in the tonnage of emissions. TCE stated that permits that require a 50% reduction in NO_x emission rates, in addition to VOC reductions, should not be issued without substantial changes to those facilities.

The rule provisions may not result in reductions in emissions. This is consistent with the statute since reductions are not required in all cases, as noted in other responses to comment in this rulemaking. HB 2912 provides clear statutory direction for the situations in which emission reductions or controls are required for the permitting of grandfathered facilities. The commission notes, however, that the permitting of these facilities will provide for codification of requirements applicable to these facilities, which may result in air quality benefits from better enforcement.

TCAA, §382.05186(e) clearly states that the commission shall grant a pipeline facilities' permit for a facility or facilities located in the East Texas Region, if the commission finds that the conditions of the permit will require a 50% reduction in the hourly emissions rate of NO_x expressed in terms of g/bhp-hr. The statute also requires up to a 50% reduction in VOC emissions from facilities located in East Texas, and up to a 20% reduction in NO_x and VOC emissions from facilities located in West Texas. All of these reductions are expressed in terms of g/bhp-hr. The staff of the Air Permits Division (APD) will be reviewing the applications for these facilities to ensure that any reductions claimed are a result of real and substantial changes at the facility. There will be no claims of a 50% reduction in NO_x emissions allowed where there has not been any physical or operational change made to the facility in order to achieve those reductions.

EDef commented that the commission should use its general authority to protect public health and adopt stronger rules that ensure predictable and significant reductions occur from the permitting of grandfathered pipeline facilities. EDef commented that if the commission is going to claim credit for permitting grandfathered emissions in the SIP, it must provide reasonable assurance that the projected emission reductions will be achieved in practice, and that the commission will have to do more than adopt a 50% reduction in emissions from pipeline facilities in order for this measure to be creditable under the SIP. EDef commented that the commission should establish a cap on emissions from pipeline facilities, modeled after the emission reduction program established in SB 7.

The commission has made no change in response to these comments. Section 382.05186(e) clearly states that the commission shall issue a permit for a pipeline facility or facilities located in East Texas if the conditions of the permit will require a 50% reduction in the hourly emissions rate of NO_x expressed in terms of g/bhp-hr. However, if these reductions overall do not result in the amount of NO_x emissions predicted for SIP purposes, the commission, along with the local stakeholders, may be required to identify additional reductions of NO_x emissions in order for the ozone nonattainment areas to achieve compliance with the NAAQS.

ATINGP/GPA stated that the use of the word "may" in the proposed §116.779(b)(1) for an up to 50% reduction in VOC emissions does not provide due notice to owners/operators of grandfathered engines of the level of reductions that may be required by the commission to obtain a permit. ATINGP/GPA stated that some types of NO_x controls will actually result in an increase in the emissions of VOC, thus creating an implementation problem. ATINGP/GPA stated that the commission should not require any VOC reductions without a demonstrated regional air quality or public health need. ATINGP/GPA stated that natural gas-fired engines are not significant sources of VOC emissions, but diesel-fired engines emit relatively significant quantities of VOCs. ATINGP/GPA stated that VOC emission reductions, if warranted by regional air quality needs, should be imposed on diesel, rather than natural gas engines. ATINGP/GPA requested that the commission modify the proposed rules to state that grandfathered engines in East Texas are not required to reduce VOC emissions in order to obtain a pipeline facilities permit. ATINGP/GPA suggested that if there is a demonstrated need for reductions in VOC emissions, the commission should consider requiring reductions of up to 50% for VOC emissions from diesel-fueled engines.

The commission has made no change in response to these comments. The regulatory language in §116.779(b)(1) allowing the commission to request up to a 50% reduction in VOC emissions is consistent with the statutory language in TCAA, §382.0518(e). The commission acknowledges that some NO_x reduction techniques may result in increases in VOC emissions. The commission also acknowledges that the VOC emissions from gas-fired engines are minimal and requiring control of these VOC emissions at this time may result in minimal improvement in air quality. However, the commission will review the emissions from each facility, including diesel-fueled engines, on a case-by-case basis to determine if reductions in VOC emissions are appropriate.

ATINGP/GPA expressed support for the portion of the proposed rule requiring reductions for pipeline engines on a g/bhp-hr basis. ATINGP/GPA stated that this conforms to legislative intent to protect a pipeline's capacity and not impair the deliverability of natural gas throughout Texas.

The commission appreciates the support.

TCE and DAR/BSA are concerned about the commission determining and verifying the following for all pipeline facilities permits: 1) the determination of the emissions rate; 2) verification of the actual rates prior to and post reduction by the commission; 3) baseline rate estimation - how will the commission calculate the baseline emissions for the facilities that are required to make the 50 and 20% reductions in the emissions; 4) guarantee of tonnage reductions; and 5) commission verification of applicants that choose to average emissions are not also including reductions made to comply with other state or federal requirement.

The commission has made no changes in response to this comment. With the exception of the guarantee of tonnage reductions, all of these items will be reviewed and verified by the permit engineer actually assigned to the permit. The actual method of verification will depend on the specific situation. For example, there may be cases where the permit engineer determines that there is enough data available about the emissions associated with a particular engine type that no additional testing or monitoring is necessary. In other cases, the permit engineer may request the use of a portable analyzer to verify before modification emissions, after modification emissions, or both.

With regard to the guarantee of tonnage reductions, the statutory language does not support the position that the legislature intended a tpy reduction from these facilities. Therefore, these rules will not require a reduction in annual emissions except in the cases where the owner or operator is seeking partial reimbursement for the cost of controls from the Emissions Reductions Incentives Account. In this case, the commission asserts that reductions in annual emissions are appropriate for reasons outlined elsewhere in this analysis of testimony.

EDef requested that the commission define a clear methodology to determine the baseline from which pipeline facilities' emissions reductions are measured. EDef suggested either requiring certified monitoring data for each facility or establishing default baseline rates for various engine types based on either published emissions data or certified testing of a representative sampling of engines in Texas.

The commission has made no change in response to this comment. The commission will establish procedures to verify both before and after control emissions from pipeline facilities to ensure that the specified reductions are actually achieved. Because different types of engines will require different procedures, the verification process will be accomplished during the review of the permit for the engine or engines. Where the commission determines that the same type of information is needed to verify emissions for a particular type of engine, the commission may develop guidance for that engine type if there are a sufficient number of engines that such guidance will be useful. Any guidance that is developed will be made available through the agency web site and other appropriate means.

TxOGA and ATINGP/GPA commented that the rules should provide that zero reductions may be acceptable in instances in West Texas where reductions cannot be economically achieved, and ATINGP/GPA commented that the statutory language does not mandate reductions of either VOC or NO_x from facilities located in West Texas, but instead allows the commission to find that zero reduction is required. ATINGP/GPA stated that *any* expenditure of funds by industry in West Texas to achieve emissions reductions is not justified and serves to consume personnel and capital resources that could otherwise be directed toward making improvements in the East Texas and nonattainment regions of the state. ATINGP/GPA stated that unless the commission ties a requirement to reduce emissions to a specific finding of need to protect the public health, general welfare, or physical property, the requirement to reduce emissions is not authorized by the Clean Air Act. ATINGP/GPA stated that the legislature viewed the West Texas reductions as a very narrow provision, not to be applied in a blanket-fashion across the breadth of West Texas, but rather only to meet limited regional air quality needs. ATINGP/GPA stated that there is no modeling or other evidence that a 20% or less reduction of the relatively minor emissions from grandfathered engines would improve public health or any regional air quality condition. ATINGP/GPA stated that a 1% reduction level is an arbitrary floor. Representative Warren Chisum expressed support for the proposed language regarding the potential reductions for NO_x and VOC from pipeline facilities applying for a permit in West Texas. Representative Chisum commented that it was not the intent of the legislature to require at least a 1% reduction, and that in some cases a 0.0% reduction would be completely appropriate in West Texas.

The commission has made no change in response to these comments. The proposed rule language in §116.779(b)(2) closely tracks the statutory language in TCAA, §382.05186(f), and while

the commission agrees it is appropriate to review, among other things, health effects and proximity to nonattainment areas, such reviews will be done on a case-by-case basis. The commission agrees that there may be some instances where reductions cannot be economically achieved based on specific engine models or configurations or the age and remaining life of the engine. Decisions regarding the level of control required, if any, will be based on technical and economic evaluations of the control options available to specific facilities. However, the commission has determined that it is appropriate to ask for reductions from engines located in West Texas when there are measures that can be applied to the engine that will result in reductions of emissions at little or no capital cost.

HSC commented that the commission should maximize the emission reduction requirements for pipeline facilities in West Texas so that they will be 20%, not "up to a 20%" reduction. HSC commented that the commission has been negligent in protecting important natural resources such as the Guadalupe Mountains National Park, Big Bend National Park, Big Bend Ranch State Natural Area, Franklin Mountains State Park, Hueco Tanks State Historic Park, and Fort Davis State Historic Park from visibility problems, and that now is the time to require maximum reductions, not delay.

The commission has made no change to this comment. TCAA, §382.05186(f) specifically requires that the commission grant a permit if the commission finds that the conditions of the permit will require up to a 20% reduction of the hourly emissions rate of NO_x. The commission notes that there are ongoing efforts relating to regional haze, which are not the subject of this rulemaking.

EDef stated that the commission should define how average emissions from multiple pipeline facilities are calculated. EDef stated that the averaging process needs to ensure that there is not a reduction in the actual amount of emissions reduction that would have been achieved through the permitting process if the units had been permitted individually.

The commission has made no change in response to these comments. The commission is developing guidance on the procedures to be used to calculate the required emission reductions from pipeline facilities. This guidance will include the procedures to be used when the owner or operator elects to average the required reductions over more than one engine. The guidance will not be finalized until interested stakeholders have had the opportunity to review and comment on the draft guidance.

ATINGP/GPA indicated support for the rule proposals that allow the permitting of more than one engine under a single pipeline facilities permit and the provisions allowing the owner/operator to average among more than one engine statewide in order to achieve any necessary emission reductions.

The commission appreciates the support.

ATINGP/GPA recommended that the criteria for averaging emission reductions among more than one engine be incorporated into the rule and recommended the following criteria: 1) use g/bhp-hr in the emissions averaging calculations and extend the g/bhp-hr for engines of different horsepowers; 2) enable use of emissions reductions achieved as a result of shut down engines in the permitting of operating engines; 3) enable use of emissions reductions achieved as a result of engines shut down after September 1, 1997 in any emissions averaging calculations; 4) ATINGP/GPA stated this would be rewarding, not penalizing, early participants in the voluntary program; 5) the commission should create a mechanism to bank and utilize emission reduction credits. In the alternative, an accounting of emission reduction credits that are generated or utilized should be kept by the permittee/commission; 6) enable use of various emissions credits available under other agency emissions credit programs for the purposes of emission averaging, such as discrete emission reduction credit (DERC), emission reduction credit (ERC), and mobile emission reduction credit (MERC); 7) if emission averaging is utilized, a supporting schedule should be incorporated into the pipeline facilities permit that documents the creation and utilization of emission credits; and 8) an entity with excess emission credits should be allowed to transfer or sell those credits to another entity.

The commission believes that there is sufficient flexibility built into the statute and rule by allowing owners and operators to average the required emissions reductions across multiple sites and that the additional flexibility provided by an emission trading program is not authorized by statute and not needed. Owners or operators electing to average the required emission reductions over more than one engine will be required to establish the emission rate for each engine and will not be allowed to establish a cap and make changes to individual engine emission rates to stay under the cap. The emission rate for each engine will be identified in the pipeline facilities permit. Since the commission will not establish a cap and trade type system for pipeline facilities, the owners or operators will not be allowed to transfer or sell "credits" to another entity.

Existing rules regarding the use of ERCs or MERCs would have to be modified to allow the use of ERCs and MERCs to comply with the required emission reductions needed in order to obtain a pipeline facilities permit. However, since the rules for DERCs allow the use of these credits for compliance with any SIP requirement, the commission will allow the use of DERCs to comply with the required emission reductions.

TxOGA requested that the commission clarify that engine shutdowns can be used when averaging among more than one engine to achieve the emission reductions required for a pipeline facilities permit. TxOGA also requested that the commission clarify that emission reductions achieved through the VERP program can be included in the average.

The commission has made no change in response to these comments. The commission agrees that engine shutdowns (or other emission reductions not required by another state or federal rule) that occurred on or after January 1, 1997 may be used when averaging reductions among more than one reciprocating internal combustion engine connected to or part of a gathering or transmission pipeline. The baseline year for purposes of SIP planning is 1997, and therefore it would be inappropriate to allow the inclusion of shutdowns occurring prior to January 1, 1997 in the calculation of the average. Please note that if reductions are averaged over more than one engine, and if shutdown engines are included in the average, the g/bhp-hr emission rate for each shut down engine, prior to the shutdown, must be included in the average to determine the amount emissions must be reduced to meet the appropriate reduction requirement.

Engines for which an owner or operator has received a VERP are not eligible for inclusion in an average. The pipeline facilities permit and the requirement for reductions in order to be eligible for the permit apply only to grandfathered facilities. Facilities for which a VERP has been issued are no longer considered grandfathered facilities and thus cannot be included in the average.

ATINGP/GPA stated that the language in proposed §116.779(b) does not specifically state that engines in nonattainment areas are subject to the provisions of the SIP for the area rather than the emission reduction requirements of these proposed sections. ATINGP/GPA suggested that the commission include language clarifying the applicability of the emission reductions requirements of these proposed rules to engines located in nonattainment areas.

The commission has made no change in response to this comment. Pipeline facility engines located in nonattainment areas are subject to both the requirements of the SIP for the area and the requirements of these sections. These rules require all grandfathered facilities in the state to obtain a permit or shut down. Grandfathered reciprocating internal combustion engines associated with pipelines, including those located in nonattainment areas, can apply for a pipeline facilities permit in order to comply with this requirement. In order to obtain a pipeline facilities permit, the owner or operator of the facility must demonstrate that the engine will meet the emissions reductions requirements contained in the proposed §116.779(b)(2). In addition, these facilities must meet the appropriate emissions reductions required in the SIP. The owner or operator should be aware that the reductions must satisfy both of these requirements when choosing how to reduce the emissions. Section 116.779(b)(4) of the proposed rules allow the owner or operator to take credit for any reductions, such as those required by the SIP, which are achieved after January 1, 2001 as long as the owner or operator does not average emissions from more than one account.

ATINGP/GPA expressed support for the provision in §116.779(a)(9) stating that the commission may require computerized air dispersion modeling if the modeling is necessary to determine impacts from the facility. However, ATINGP/GPA stated that the provision for ambient monitoring contained in this same subsection is generally not warranted because of the expense and time involved in performing the monitoring in remote areas of the state where many of these facilities are located.

The commission has made no change in response to this comment. Although not often required, there may be situations where ambient monitoring is appropriate and useful. The commission reserves the ability to require ambient monitoring in those situations. In addition, a few applicants have elected to perform ambient monitoring in order to establish the level of impacts from their facility on the surrounding property or to provide for an ongoing compliance demonstration.

ATINGP/GPA stated that the commission's cost analysis fails to take into account the engineering costs and studies that must be performed to study and analyze the types of controls that will be successful in achieving controls on a particular engine. ATINGP/GPA stated that no one-size-fits-all control technology or parametric controls will work for every engine. ATINGP/GPA specifically cited the commission's cost estimates for low emission combustion technology and non-selective catalytic reduction as being too low. In both instances, ATINGP/GPA cited the commission's failure to account for any needed engine/exhaust/intake/etc modifications necessary to make the control systems operate properly.

The commission's cost estimates were based on publicly available information, the EPA's alternative control techniques (ACT) document for NO_x controls on stationary reciprocating engines. The authors of the EPA document attempted to reconcile lower cost estimates from control equipment vendors with higher costs suggested by the regulated community. Although hundreds of stationary gas-fired engines have been modified to reduce NO_x emissions in the last decades, complete cost documentation is often guarded by engine owners for competitiveness or other reasons. The published cost estimates are only rough approximations, using standard estimating factors for engineering costs. Qualitatively, a population of older engines is likely to require more costly engineering analysis of control options compared to a newer one because engine conditions become more varied over time. Nonetheless, once engineering studies are completed, the more modest emission reduction goals of the grandfathered pipeline permit program as compared to low emission retrofits presumed in the cost note should result in lower costs in many instances than the cost note. From limited cost information in applications for use determination filed with the commission in conjunction with property tax abatements for pollution control systems, it appears that the capital costs for non-selective catalytic reduction agree fairly well with the ACT. Two use determinations for low emission retrofits for compliance with the Chapter 117 engine NO_x rule in Beaumont Port/Arthur (75% - 85% NO_x reduction) indicate higher engine modification costs than identified in the ACT. These higher costs may result from a combination of additional modifications necessary to make the control systems operate properly, not identified in the ACT, and upgrades which provide both qualitative emission benefit and more quantitative operational benefit. Sometimes it is difficult to separate these costs. The commission will have the opportunity to consider costs more specifically with individual permit applications.

HSC stated that the reimbursement criteria, "highest percentage reductions" and "projects that occur early" should be weighed more heavily than those that "are most cost effective." HSC stated that "cost effectiveness" is a company determination, not a commission determination. HSC also commented that the use of purchased emission credits allows companies to ignore environmental justice and local community impacts of emissions.

The commission has made no change in response to this comment. However, as noted elsewhere in the response to comments, the commission is not going to allow the use of credits in achieving the reductions required by these rules. The one exception to this, as also noted elsewhere, is the use of DERCs. The commission does not anticipate the widespread use of DERCs to comply with the emission reduction requirements of these rules. The commission also wishes to note that the commission has addressed environmental justice issues relating to the cap and trade program in a previous rulemaking regarding that program. Those rules provide for the executive director to halt trading for a certain area if problems result from trading in a localized area of concern and provide that increases in emissions by use of credits are allowed on a temporary basis, not perpetually, and are limited to 25 tons for NO_x and five tons for VOC in any 12-month period. All other uses would allow sources only to remain at the current emission rates or lower. Additionally, the commission has made a strong policy commitment to address environmental equity by creating an environmental equity program within the Office of Public Assistance. This program works to help citizens and neighborhood groups participate in the regulatory process; to ensure that agency programs that substantially affect human health or the environment operate without discrimination; and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all. The Office of Public Assistance can be reached at 1-800-687-4040 for further information.

EPA stated that the provisions of the rule pertaining to the partial reimbursement of the cost of controls for pipeline facilities does not need to be submitted as a part of the SIP.

The commission agrees with the commenter, and has removed the sections of the rule regarding reimbursement from the SIP submittal, since the reimbursement portion of the rules will be effective for a limited duration, and are not directly tied to attainment or maintenance of air quality.

TCE and EDef expressed general support for the proposed requirement for a 50% reduction in annual emissions in order for pipeline facilities located in East Texas to be eligible for partial reimbursement of the cost of controls. EDef also stated they supported the proposed criteria for the distribution of funds with one exception - they state funds should not be used for reductions already required in a SIP. ATINGP/GPA stated that proposed §116.776(c)(1) contains a typo in that it still has a reference to a facility that is located in a nonattainment area for ozone. ATINGP/GPA stated that this clause should be deleted to make it consistent with other subsections of this section.

The commission appreciates the support, and agrees that facilities required to make reductions in NO_x emissions by another state or federal requirement are not allowed to request reimbursement from the Emissions Reductions Incentives Account. This restriction was included in §116.776(a), and has been clarified in §116.776(c)(1) by removing "...located in... a nonattainment area for ozone" from the criteria to be considered.

ATINGP/GPA expressed support for the proposed provision that makes engines required to reduce emissions by some other state or federal law ineligible for reimbursement from the Emissions Reductions Incentives Account, but asked that the commission clarify the intent of this section, otherwise the section could be misconstrued to make ineligible those engines that will be subject to a MACT standard.

The commission appreciates the support. The commission has changed the language of §116.776(a)(10) to state, "Facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement." MACT standards are intended to regulate emissions of hazardous air pollutants, and not NO_x. Therefore, the commission agrees that an engine subject to a MACT standard is still eligible for reimbursement as long as it is not subject to any state or federal law which specifically requires a reduction in NO_x emissions.

ATINGP/GPA expressed general support for the provisions of proposed §116.775 regarding the distribution of funds from the Emissions Reductions Incentives Account. ATINGP/GPA and TXU commented that the criteria requiring a reduction of 50% in the annual emissions of NO_x in order to qualify for a reimbursement of a portion of the cost of controls for pipeline facilities in East Texas should be deleted, since HB 2912 and HB 2914 require only a 50% reduction in hourly emissions of NO_x.

The commission has made no change in response to these comments. The commission disagrees with the comment that the requirement to achieve actual reductions in NO_x emissions from the 1997 emissions inventory detracts from requirement to obtain a 50% reduction in g/bhp-hr in order to obtain a pipeline facilities permit. Indeed, the commission believes that the requirement to make reductions in annual NO_x emissions from the 1997 emissions inventory actually helps to achieve the purpose behind the reimbursement program, which was to encourage real, annual reductions in NO_x emissions from sources outside the nonattainment areas in East Texas. HB 2912 does require a 50% reduction in hourly emissions of NO_x in order to obtain a pipeline facilities permit in East Texas. HB 2914 states that facilities required to obtain a 50% reduction in NO_x emissions in East Texas are eligible for a partial reimbursement of the cost of controls from the Emissions Reductions Incentives Account. Further, HB 2914 directs the commission to develop the criteria for reimbursement and leaves the criteria to the commission's discretion. The Emissions Reductions Incentives Account was created to provide for a partial reimbursement of the cost of controls for pipeline engines outside the nonattainment areas in East Texas because the owners and operators of these engines are being asked to make reductions in NO_x emissions in order to help nonattainment areas reach attainment. The commission believes that setting one of the criteria for reimbursement as a reduction in annual emissions of NO_x is appropriate since these emission reductions will be needed in order to reach the goal of attainment for ozone in the East Texas nonattainment areas.

ATINGP/GPA commented that proposed §116.776(a)(6), requiring a pipeline facilities permit to be issued before the owner/operator can request a distribution from the reimbursement account is awkward, and that the review should take place simultaneously with the review of the application. ATINGP/GPA suggested that the rule be revised to require an application for a pipeline facilities permit to be filed and undergoing review before the owner/operator may request a distribution from the fund.

The commission agrees with this comment and has changed §116.776(a)(6) to require identification of those facilities requesting a reimbursement from the Emissions Reductions Incentives Account at the time the permit application is filed. The commission is requesting this information in order to obtain a list of the facilities potentially eligible for reimbursement as early as possible. However, no money can be paid to a facility until the permit is issued and the required reductions have been accomplished at the facility. The actual process for reimbursement is still under development at this time and will be provided in a guidance document at a later date.

ATINGP/GPA requested that the commission delete the requirement in proposed §116.779(b)(1) to obtain "at least" a 50% reduction of the hourly emissions rate of NO_x, expressed in g/bhp-hr, in order to be eligible for reimbursement. ATINGP/GPA indicated they thought that the "at least" should be removed so that it will not be construed that the commission may require reductions beyond 50% from facilities in East Texas in order to get a pipeline facilities permit.

The commission has made no change in response to this comment. The "at least" language was included in this rule to make it clear that a 50% reduction in the emissions of NO_x, expressed in terms of g/bhp-hr, is the *minimum* amount of reductions that will be needed in order to be eligible for a pipeline facilities permit. Any reductions over the required 50% are welcomed and encouraged by the commission. However, the commission will not require greater than 50% reductions in order to qualify for a pipeline facilities permit.

TCE commented that they did not find any language relating to HB 2914 emission rate reductions in the proposed rules.

The commission has not made any change in response to this comment. HB 2914 itself does not specify any emissions rate reductions. HB 2914 does require that a facility be a grandfathered reciprocating internal combustion engine associated with

a pipeline that is subject to the requirement to reduce emissions by 50%. HB 2914 also specifies that the engine be reducing its hourly emissions of NO_x by 50% in order to request reimbursement from the Emissions Reductions Incentives Account.

TCE requested clarification regarding the specific criteria the commission is referring to in the proposed language regarding the distribution of funds from the Emissions Reductions Incentives Account.

The criteria that the commission will use in determining the priorities for reimbursement from the Emissions Reductions Incentives Account are listed in §116.776(c). However, the actual process that will be used to assess the weighting of each of the criteria to determine the priority and amount of distribution from the Emissions Reductions Incentives Account is still under development at this time and will be addressed in guidance which will be provided at a later date. The commission will invite stakeholder input prior to finalizing the guidance.

ATINGP/GPA requested clarification of the proposed §116.779(a)(5), regarding demonstration of compliance with any applicable MACT standard. ATINGP/GPA requested clarification that the commission did not expect the owner/operator of an engine subject to a MACT standard to have any required MACT controls installed by the date they must submit a permit application when the MACT standard provides for a later date by which controls must be installed.

The commission has made no change in response to this comment, but does confirm that an existing source will not have to be in compliance with any applicable MACT standard until the compliance date for that standard. The commission does encourage owners and operators of sources that are required to install controls to obtain a permit for a grandfathered source to take into consideration any additional controls that may be required by an applicable MACT standard.

Lee P. Brown, Mayor, City of Houston stated that the commission should take extra care to ensure that the emission reduction standards of HB 2912 are consistently met for any facility-wide, flexible permits.

Any permit issued by the commission, including any flexible permit or existing facility flexible permit, will specify the emissions limits and control requirements necessary to obtain the permit. The permit will also contain conditions necessary to ensure ongoing compliance with those emissions limitations and control requirements.

EPA stated that §116.777, Eligibility for Existing Facility Permits, should clarify how an "Existing Facility Permit" differs from a permit to operate under §116.770.

The commission has made no rule change in response to this comment. The proposed §116.770 states the general requirement for the owners or operators of all grandfathered facilities to obtain a permit for those facilities. Additional language was added to the Section by Section Discussion portion of this preamble for Division 1 which explains the relationship between the general requirements in Division 1 and the specific permit requirements contained in Divisions 2 and 3 and Subchapter I. The "Existing Facility Permit" is one type of permit that the owners or operators of certain grandfathered facilities may use to satisfy the requirements of §116.770 to obtain a permit.

ATINGP/GPA requested that the commission develop a guidance document that identifies ten- year BACT for many common grandfathered sources in order the streamline the review process for existing facility permits.

The commission has existing guidance which is updated annually and identifies ten-year-old BACT for many common types of sources. The document is entitled, "Guidance for Air Quality - Qualified Changes Under Senate Bill 1126." Appendix A of this document contains the information on ten-year-old BACT. Appendix A can be found on the APD web site at: *www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/bact.htm*

You may also contact the APD for a copy of this guidance. Although the guidance document itself was developed for different purposes, the information on ten-year-old BACT can be used as a starting place for identifying ten-year-old BACT for existing facility permits. However, this is a guidance document, and is not a final determination of acceptability by the commission. APD or the individual permit engineer should be contacted to ensure that the information is still current and the control technology still meets the ten-year-old BACT requirement.

TCE and DAR/BSA expressed support for the commission's position that an insignificant emission factor would not be included when calculating the emissions limit for and existing facility flexible permit.

The commission appreciates the support.

HSC commented that the proposed §116.802 provides for the avoidance of NSR permitting for any company that increases its emissions. HSC stated that the commission does not define "significant," and that the public should allowed to review and comment on the definition.

The commission has made no change in response to this comment. Although the proposed §116.802 does not specifically define "significant," it states that any increase in emissions from operational or physical changes at an existing facility covered by an existing facility flexible permit that does not result in an increase in emissions over the cap is insignificant. As part of the permit review for an existing facility flexible permit, the commission conducts a review of the emissions as established in the cap. Therefore, any increase in emissions which does not exceed this cap has already been reviewed by the commission and the company is not "avoiding" NSR permitting. In addition, the public has access to all of this information during the permit review process. Finally, the company is not allowed to install new facilities or emit a new air contaminant under the cap - either of these activities will require a new review under the NSR permitting procedures.

EPA requested clarification of how an "Existing Facility Flexible Permit" is distinguished from a "Flexible Permit" under Subchapter G of the rule.

The commission has made no change in response to this comment. Flexible permits under Subchapter G may be used by any facility, including grandfathered facilities, provided the facility meets the requirements of Subchapter G. Existing facility flexible permits are only available for grandfathered facilities. Additionally, flexible permits require BACT and an opportunity for a contested case hearing and existing facility flexible permits require ten-year-old BACT and a notice and comment hearing for initial issuance. Once issued, existing facility flexible permits are subject to the same renewal and amendment requirements as flexible permits, including BACT for amendments and an opportunity for a contested case hearing for both amendments and renewals.

EPA commented that the air pollution control methods discussed in §116.794(3) should be agreed upon prior to permit issuance and incorporated as terms and conditions into the permit.

The commission has made no change in response to this comment. The commission agrees with this comment and notes that the control methods necessary for any air permitting process must be identified in the application, agreed to prior to permit issuance, and appropriately incorporated into the issued permit.

EPA requested clarification of how the commission will implement the provision, "are considered permitted for all air contaminants" for gas-fired EGFs that were required to obtain a permit under SB 7 or were exempt from the requirement to obtain a permit under SB 7.

SB 7 required the commission to establish allowances for NO_x emissions from gas-fired EGFs. However, the permits required by SB 7 are issued under the Texas Utilities Code. HB 2912 clearly states that any gas-fired EGF which satisfies the permitting requirements of SB 7 or which is exempt from the permitting requirements of SB 7 is considered permitted for all air contaminants under THSC, Chapter 382. Thus, these EGFs are no longer considered grandfathered facilities under THSC, Chapter 382. The commission will issue a "permit" to these facilities. The permit will identify the facilities which have been permitted and will contain the general and special conditions in §116.913. Permits issued under §116.917 will receive the additional general and special conditions in §116.918.

EPA commented that the commission should clarify and explain the phrases "emissions of all air contaminants" and "all air contaminants," contained in §116.913(a)(1)(A) and (E), respectively.

The commission has made no change to this comment. In enacting the requirements of HB 2912, the Texas Legislature specifically stated in TCAA, §382.05185, that an electric generating facility is considered permitted with respect to all air contaminants if the facility met certain conditions. Section 116.913 implements this plain requirement for electric generating facility permits. "Air contaminant" is defined in TCAA, §382.003.

TXU identified what they assumed was a typographical error in the proposed §116.917(a). TXU stated that they believed the reference to an application for grandfathered facilities identified in §116.611(f)(1) or (2) should instead reference §116.911(f)(1) and (2). TXU stated that if the reference as they believe it was intended is correct then the owner or operator of an EGF seeking an EGF permit must demonstrate that the facility will meet protection of public health and welfare requirements. TXU states that the only requirement for coal-fired EGFs is to look at criteria pollutants, and the only requirement for non-EGF combustion units is to include their emissions in the emission allowance trading program without additional allowances. TXU states that the term "air contaminants" in §116.917(a)(11) should be replaced with "relevant criteria pollutants."

The commission agrees with the comment regarding the typographical error and has changed the rule to reflect the correct citation of §116.911(f)(1) or (2).

The statutory language of TCAA, §382.05185 clearly requires the commission to issue permits for coal-fired EGFs for the criteria pollutants other than NO_x, SO_2 or opacity if the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. The commission has determined that the appropriate way to implement this requirement is to require that EGF permits be subject to permitting application and issuance requirements similar to the requirements for NSR permits. This will ensure consistent permit reviews with appropriate emphasis on the relevant statutory obligations for EGFs, in the context of the appropriate permit review.

The commission agrees that §382.05185(e) clearly requires emissions from non-EGF combustion units to be included in the emission allowance trading program, and the commission may not issue new allowances. However, the commission also observes that the allowance program only provides for emissions on NO_x, while the legislature clearly contemplated that these EGF permits would address all air contaminants, and that emissions from these facilities would not contravene the intent of the TCAA, including the protection of the public's health and physical property.

The commission has not changed the language of §116.917(a)(11), since limiting the required information submitted in applications to "relevant criteria pollutants" would not ensure that adequate information would be provided to meet the requirements of the complete permit review, which includes the requirement to ensure that emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property.

CPS opposes the application of §116.771 to EGFs because it implies that controls are mandated and that an implementation schedule must be provided for the installation and operation of such controls.

The commission has made no change in response to this comment. The commission disagrees that §116.771 implies any mandate for controls since this section begins with the conditional phrase, "If the installation of additional controls is required...." Although the commission does not anticipate any control requirement for EGFs beyond any controls necessary to comply with SB 7, TCAA, §382.05181 specifies that the requirement to have any additional controls installed prior to March 1, 2007 in East Texas and March 1, 2008 in West Texas applies to *any* facility affected by TCAA, §382.0518(g), not just any non-EGF facility.

CPS stated that they hope the commission will continue to consider EGF permits unique from other permits in providing the flexibility of control and allocation of allowances based on annual limits provided for Chapter 101, Subchapter H, Division 2.

The commission has made no change in response to this comment. The commission intends to continue to allow EGFs the flexibility to meet the allowance requirements for air contaminants covered by SB 7. However, the commission will issue permits with maximum allowable emission rate tables (MAERT) for grandfathered auxiliary generators and other grandfathered combustion equipment located at an EGF site, but which is also required by HB 2912 to obtain a permit or shut down. In addition, the emissions from the auxiliary generators and other combustion equipment must be included in the amount of allowances needed for the site in any given year. As stated in HB 2912, no new allowances will be issued to the site for the operation of this equipment.

CPS commented that the proposed methodology for adding new units at existing EGFs brings these new units into the standardized state permitting requirements rather than continuation of the flexible allowance based system of SB 7. CPS stated that the proposed language needs to be changed to provide for the allowance based system envisioned by SB 7.

The commission agrees with the comment that the proposed methodology for permitting existing combustion equipment at an EGF is similar to the methodology for permitting new and modified units. However, the allowance based system provided by SB 7 is retained in §382.05185(e) and the proposed methodology provides the flexibility of SB 7 permits for emissions of NO_x in that the only limit on NO_x emissions contained in the permit for the additional combustion units will be the NO_x allowances for the site resulting from SB 7. The other air contaminants emitted from these facilities will have limits included in a MAERT just like any other NSR permit. The commission believes this approach is appropriate and is consistent with the statute. These facilities are required to apply for a permit and specified that any modifications to the permit or renewal of the permit be reviewed under the existing requirements contained in the act. Because these EGF permits will follow the existing procedures for modification and renewal, it is appropriate that they use similar methodology and look as similar as possible to permits for new and modified sources. This harmonizes the requirements of HB 2912 and the pre-existing TCAA permitting requirements.

HSC and GHASP commented that they oppose allowing a company to operate for 10% of its operating hours without applying for a permit. HSC and GHASP also commented that this operation could occur during peak ozone season, which would have the most impact on citizen's health and welfare. GHASP stated that the provision should be revised to establish a maximum weekly operating limit of 20 hours in addition to the proposed restriction.

The commission has made no changes in response to these comments. The proposed rules do not allow a company to operate any unit for 10% of its normal operating hours and avoid the requirement to obtain a permit. The proposed rules require *all* grandfathered facilities in Texas to obtain a permit or shut down. If an auxiliary generator operating at a facility which is required to obtain a permit under SB 7 operates less than 10% of the normal operating hours (as defined in §116.10), the owner or operator of the facility may apply for an EGF permit rather than some other type of permit. Although these auxiliary generators could operate during the ozone season, there will not be any additional annual emissions of NO_x from these facilities since they do not get any additional allowances under SB 7.

The statute is clear that facilities operating less than 10% of the normal operating hours of the EGFs at the site may apply for an EGF permit. Therefore, the commission does not believe it is appropriate to place any additional limitations on the operating time of these facilities in order to obtain an EGF permit.

TCE is concerned that if impacts are found, the commission might not request changes to the permit if an auxiliary generator is operated less than 10% of the time.

The commission has made no change in response to this comment. If a facility is found to violate a standard such as the NAAQS, the commission may not issue a permit to that facility no matter what percent of the time it operates.

TXU commented that the definition of "normal operating schedule" should be based on the normal operating schedule of the grid (8,760 hours per year) rather than the normal operating schedule of the EGFs at a particular site.

The commission does not agree that the "normal operating schedule" should be the operating schedule of the electric grid. The statutory language in TCAA, §382.05185(d) refers to facilities, not the electric grid. There is no indication in the statutory requirements for electric generating facility permits that the legislature intended to rely upon such a schedule, in lieu of the schedule applicable to a specific site. However, the commission does agree that the statute may be interpreted to provide some additional flexibility, and the commission has changed the language in this definition to establish the normal operating schedule as the maximum number of operating hours for an EGF in any 12 consecutive month period between 1997 and 1999. For sites with more than one EGF, the owner or operator may use the EGF with the highest number of operating hours.

EPA commented that there was no basis specified for the definition of "Normal Annual Operating Schedule," particularly why years 1997 - 1999 were required to be included in the calculation of the average, but years 2000 and 2001 were not.

The commission used the heat input for 1997 as the basis for establishing allowables for EGFs under SB 7. Since HB 2912 requires the emissions from these auxiliary combustion units which receive an EGF permit to fit under those same allowables, the commission considers it appropriate to use a similar basis to define "normal operating schedule." However, in order to provide some additional flexibility, the commission decided to use the maximum number of operating hours for an EGF in any 12 consecutive month period between 1997 and 1999. For sites with more than one EGF, the owner or operator may use the EGF with the highest number of operating hours. The commission has changed the language in this definition for the reasons mentioned in the response to the previous comment.

TCE expressed concern that the modeling for grandfathered EGF's designed to burn fuel oil is not sufficient to make a determination that any grade of fuel oil should be allowable. HSC stated that they support requiring EGF facilities to undergo NSR permitting if they decide to burn fuel oil rather than natural gas. The House Committee on Environmental Regulation stated that the goals of the legislation were to provide for the widest range of fuel oil use possible to give grandfathered EGFs a meaningful choice of fuel and to ensure that emissions controls would not interfere with the SIPs, specifically with regard to NO_x. AECT stated that the intent of the legislature regarding acceptable fuel oil grades was that the commission would designate as being acceptable as broad a range of grades of fuel oil as possible, as long as air quality standards would be met. AECT stated that designation of a broad range of acceptable grades of fuel oil is critical to ensure maximum fuel flexibility and continued availability of reliable electric power in Texas. AECT stated that the proposed §116.18(11) unnecessarily and unreasonably limits the range of fuel oil grades that could be burned in grandfathered EGFs. AECT and the House Committee on Environmental Regulation stated that the legislative intent was to limit the commission's review of acceptable fuel oil grades to "standards," and since the commission's effects screening levels are not standards, the evaluation of fuel oil firing with respect to the ESLs is contrary to legislative intent. AECT stated that the methodology the commission used to establish the acceptable fuel oil grades proposed in §116.18(11) was unnecessarily restrictive and resulted in a limit that was too stringent. The House Committee on Environmental Regulation and AECT commented that the commission should allow grandfathered EGFs to burn any grade of fuel oil that meets the specifications in §112.9, as long as the owner or operator of the grandfathered EGF can ensure that the burning of the desired grade of fuel oil in the EGF will not cause a violation of the SO_2 property line standard. AECT also requested that the rule language in proposed

§116.18(11)(B) be changed to refer to a "determination" by the executive director rather than a "demonstration" by the owner or operator of the facility. The House Committee on Environmental Regulation and AECT suggested that proposed §116.18(11) be revised to reads as follows: "11) Natural gas-fired EGF - For purposes of Subchapter I of this chapter, an EGF that was designed to burn either natural gas or fuel oil, and that when burning fuel oil only burns fuel oil of a grade determined by the commission to be acceptable. Burning of a fuel oil designated by this definition as acceptable does not relieve the owner or operator of the EGF from the responsibility to comply with the emission limitations, allowances, or conditions of any permit or state or federal regulation, such as the applicable sulfur dioxide (SO_2) property line standard in §112.3. Acceptable fuel oil grades are: A) Any American Society for Testing and Materials (ASTM) grade of fuel oil, the burning of which will comply with the applicable limits in §112.9. B) Any other grade of fuel oil which the executive director determines is protective of the SO_2 property line standard in §112.3."

TXU stated that it had a great deal of concern over the process being used by the commission to establish acceptable fuel oil grades. TXU and CPS stated that the maximum fuel oil sulfur content that should be modeled by the commission should be 0.7% because a higher sulfur content would result in a stack concentration that exceeds the limit in Chapter 112. TXU stated that the grade of acceptable fuel oil should be changed to any grade with 0.7% sulfur except for specific plants where the modeling indicates there may be a problem. CPS commented that the commission should consider allowing utilities to burn fuel oil at levels of sulfur at or below 0.7% or at least consider modeling these levels to determine impacts with the state standards. TXU stated that the analysis should be an open process that includes a review by the owners of the facilities being modeled to ensure that the model inputs are accurate. AECT and the House Committee on Environmental Regulation commented that the commission's interpretation of the the term "designed to burn" is more narrow than allowed by the statutory language in TCAA, §382.05185(i). The House Committee on Environmental Regulation and AECT commented that "designed to burn" should only prohibit a physical change that would constitute a modification under §116.10(9). AECT stated that based on the regulatory definitions of "EGF" and "facility" the EGF does not include every piece of equipment at a grandfathered EGF site that is involved with the burning of fuel oil. AECT stated that any maintenance or repairs to any equipment that comprises the EGF, or any like-kind replacement of any such equipment, that is necessary to allow the EGF to burn fuel oil, should not prevent the EGF from being considered to be "designed to burn" fuel oil. The House Committee on Environmental Regulation stated that "designed to burn" in TCAA, §382.05185(i) means a facility was designed to burn any fuel oil grade - even if the grade will no longer be considered acceptable for burning following the adoption of these rules. Similarly, AECT stated that if an EGF is "designed to burn" a grade of fuel oil, the fact that such fuel oil grade may not be considered acceptable under the final rules should not prevent the EGF from meeting the "designed to burn" condition. The House Committee commented that the statute only limits the grade of fuel oil prospectively, but does not mean the grade historically burned should prohibit burning a lighter grade in the future. AECT stated that proposed §116.18(11) and the associated preamble need to be revised to clearly provide that the "designed to burn" condition is met for such an EGF. AECT requested that the review process for case-by-case determinations be made quick and simple and be based on modeling and/or monitoring results related to the impact of burning of the desired grade of fuel oil on the ability of the site to meet the SO_2 property line standard. EPA stated that with regard to §116.18(11)(B), there should be a "replicable" procedure for how the executive director will determine if "any other grade of fuel oil" is protective of public health and physical property." AECT specifically requested that the procedure involve submittal of a written request to the commission staff that includes any necessary fuel and facility information. The commission should then use modeling or monitoring information it already has to evaluate the request, model the request using staff resources, or request that the applicant conduct the modeling or monitoring anaysis and submit it to the staff for review. AECT requested that this case-by-case determination process be discussed in the preamble to the final rule. AECT also requested that §116.18(11)(B) provide for an opportunity to request reconsideration of any determination of acceptable fuel oil grades under 30 TAC Chapter 55. AECT requested that the following language be used for §116.18(11)(B): "In the event that the owner or operator of the EGF disagrees with the executive director's determination, the owner or operator may request a reconsideration of that determination under the procedures of Chapter 55."

TXU stated that facilities should be allowed to combust the fuel they have on-site and any limitations should be placed on the receipt of any new fuel oil. TXU stated that limiting the ability of utilities to fire residual oils will limit the market for these fuels in Texas and could result in the fuels being combusted by sources that would have a higher impact on the public because of the location and height of the emissions. TXU also stated that prohibiting the burning of Number 5 fuel oil could impact winter reliability if natural gas is curtailed before a conversion to Number 2 oil can be accomplished. TXU stated that it would cost them $30 million to $40 million to convert 14 facilities from firing Number 5 fuel oil to firing Number 2 fuel oil with the majority of the cost being to change out the fuel.

The proposed rule established ASTM Grade Number 2 fuel oil containing not more than 0.3% sulfur by weight as acceptable. The commission stated in the preamble to the proposed rule that staff was continuing to analyze other fuel oil grades and refine the modeling analysis. As a result of this additional analysis of the effects of burning fuel oil in grandfathered EGFs and in order to address all of the comments on the burning of fuel oil, the commission changed the proposed definition of "Natural gas-fired EGF" in §116.18(11) to simply state that for purposes of Subchapter I, a natural gas- fired EGF is, "an EGF that was designed to burn either natural gas or an EGF that was designed to burn both natural gas and fuel oil." The conditions governing the burning of fuel oil at grandfathered EGFs have been added as general conditions §116.913(a)(8) and (9).

The commission has determined that any ASTM grade of fuel oil with a sulfur content of 0.7% by weight or less is acceptable, except in areas where sulfur content is limited further by Chapter 112. This limitation has been added to the general conditions in §116.913. The modeling analysis for SO_2 concluded that there will not be any exceedances of the NAAQS or state standards in Chapter 112. Metals have been identified as the primary hazardous air pollutant associated with the burning of fuel oil. Adverse impacts from metals are caused by long term exposure to unacceptable levels of emissions. The commission does not expect long term exposure to metals emissions because fuel oil is only burned for short periods of time due to natural gas curtailments or extremely high natural gas prices. Historical data has shown that these curtailments and high natural gas prices have occurred infrequently and last only for short periods of time.

Thus, the commission does not expect any adverse health effects associated with the burning of fuel oil. However, the commission has added a general condition to §116.913 requiring the EGF to keep records of fuel oil burning and submit those records with the report required under §101.336(b). In addition, EPA is developing a MACT standard which is expected to address emissions of metals, primarily nickel, from fuel oil fired EGFs. Any EGF which burns fuel oil for any extended period of time would likely be subject to this MACT standard. The commission has also added language in §116.913(a)(8) that clarifies that the burning of waste or used oils is not authorized under Subchapter I.

EPA recommended adding "as determined by ASTM method D396" to the end of the sentence in §116.18(11)(a) which reads "American Society for Testing and Materials (ASTM) grade number 1 or 2 fuel oil containing not more than 0.3% sulfur by weight."

The commission has made the suggested addition to the condition contained in §116.913(a)(8).

TCE and DAR/BSA commented that the commission should review mercury emissions from grandfathered facilities. Additionally, TCE commented that the commission should review all the pollutants from grandfathered power plants, including five-minute exposure to sulfur compounds. TCE stated that they were concerned about places where people congregate in close proximity to power plants and the effects of power plants on waterways that are far from the facility. DAR/BSA also expressed concern regarding lead emissions, and commented that this rulemaking would be a good opportunity to obtain lower emissions of mercury and lead.

The commission has made no change in response to these comments. Mercury has been raised by many organizations across the country as an air contaminant of concern for coal-fired power plants. However, there are significant technical and policy questions which need to be answered before a comprehensive strategy to handle mercury emissions from EGFs can be fully developed. Mercury emissions associated with these units will be addressed in the future by the President's Clear Skies Initiative multi-pollutant strategy and/or a MACT standard under development by the EPA. Accordingly, without downplaying the important issues with respect to mercury, the commission considers it prudent to review the outcomes of the Clear Skies Initiative and the utility MACT before making further decisions about regulation of mercury from EGFs in Texas.

Coal-fired EGFs can apply for an EGF permit for the criteria pollutants not addressed by SB 7, and once they obtain this EGF permit, they are no longer considered grandfathered facilities. The commission notes that lead is a criteria pollutant; therefore, these EGFs will have to address any lead emissions in the EGF permit application.

The commission agrees that numerous studies have shown that five-minute exposure to bursts of SO_2 can cause individuals with asthma to experience respiratory effects due to bronchial constriction. In fact, the EPA has a proposed intervention level for SO_2 of 600 parts per billion (ppb) (five-minute averaging period), above which asthmatics may experience shortness of breath, chest tightness, wheezing, and disruption of normal activities. While the NAAQS is not protective of these five-minute bursts, the Chapter 112 standard for SO_2, 30- minute average net ground level concentration of 400 ppb, helps to minimize the potential occurrence of five-minute concentrations greater than 600 ppb. Therefore, the commission notes that the required demonstration of compliance with the Chapter 112 standard would alleviate five-minute SO_2 concerns.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.10, §116.18

STATUTORY AUTHORITY

The amendments are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

§116.18. Electric Generating Facility Permits Definitions.

The following words and terms, when used in Subchapter I of this chapter (relating to Electric Generating Facility Permits) shall have the following meanings, unless the context clearly indicates otherwise.

(1) Allowance - As defined in §101.330(1) of this title (relating to Definitions).

(2) Capacity factor - Either:

(A) the ratio of an electric generating facility's (EGF) actual annual electric output (expressed in megawatt-hours) to the EGF's nameplate capacity times 8,760 hours; or

(B) the ratio of an EGF's annual heat input (in millions of British thermal units (MMBtu)) to the EGF's maximum design heat input (in MMBtu per hour) times 8,760 hours.

(3) Coal - As defined in §101.330(6) of this title.

(4) Coal-fired - As defined in §101.330(7) of this title.

(5) Compliance account - As defined in §101.330(8) of this title.

(6) Control period - As defined in §101.330(9) of this title.

(7) Electing EGF - As defined in §101.330(11) of this title.

(8) Electric generating facility (EGF) - As defined in §101.330(12) of this title.

(9) Grandfathered EGF - As defined in §101.330(14) of this title.

(10) Nameplate capacity - The maximum electrical output (expressed in megawatts) that an EGF can sustain over a specified period of time when not restricted by seasonal or other deratings.

(11) Natural gas-fired EGF - For purposes of Subchapter I of this chapter, an EGF that was designed to burn either natural gas or an EGF that was designed to burn both natural gas and fuel oil.

(12) Normal Annual Operating Schedule - For the purposes of §116.911(f)(1) of this title (relating to Electric Generating Facility Permit Application), the maximum number of operating hours for an EGF in any 12 consecutive month period between January 1, 1997 and December 31, 1999. For sites with more than one EGF, the owner or operator may use the EGF with the highest number of operating hours.

(13) Peaking unit - An EGF that has:

(A) an average capacity factor of no more than 10% during the past three calendar years; and

(B) a capacity factor of no more than 20% in each of those calendar years.

(14) Person - As defined in §101.330(17) of this title.

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

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Director, Environmental Law Division
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For further information, please call: (512) 239-4712

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SUBCHAPTER H. PERMITS FOR GRANDFATHERED FACILITIES
DIVISION 1. GENERAL APPLICABILITY

30 TAC §§116.770 - 116.772

STATUTORY AUTHORITY

The new sections are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; and TWC, §5.103, which authorizes the commission to adopt rules.

§116.771. Implementation Schedule for Additional Controls.

(a) If the installation of additional controls is required for a grandfathered facility to meet an emission limit for a pollutant, the permit shall specify an implementation schedule for such additional controls. Any such schedule shall require installation and operation of controls before March 1, 2007 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions) or before March 1, 2008 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) The owner or operator of a grandfathered facility that does not obtain a permit within 12 months of receipt by the commission of an administratively complete application for a permit may petition the commission for an extension of the time period for the installation of controls under subsection (a) of this section. The commission may grant not more than one extension for a facility, for an additional period of not more than 12 months, if the commission finds good cause for the extension.

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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DIVISION 2. SMALL BUSINESS STATIONARY SOURCE PERMITS, PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS

30 TAC §§116.774 - 116.777, 116.779 - 116.781, 116.783, 116.785 - 116.788, 116.790

STATUTORY AUTHORITY

The new sections are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.061, which provides for delegation of powers and duties to the executive director; TWC, §5.103, which authorizes the commission to adopt rules; and TWC, §5.122, which provides for delegation of uncontested matters to the executive director.

§116.774. Eligibility for Small Business Stationary Source Permits.

(a) The owner or operator of a grandfathered facility located at a small business stationary source, as defined in TCAA, §382.0365(h), and which is not required to report to the commission under TCAA, §382.014 may apply for a small business stationary source permit before September 1, 2004.

(b) The deadlines contained in §116.770 of this title (relating to Requirement to Apply) and §116.771 of this title (relating to Implementation Schedule for Additional Controls) do not apply to facilities eligible to apply for a small business stationary source permit. Any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under §116.772 of this title (relating to Notice of Shutdown), located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted, or has a permit application pending under this chapter, or has a registration or pending registration for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(c) Applications for a small business stationary source permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(d) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the small business stationary permit and for complying with this subchapter.

§116.775. Eligibility for Pipeline Facilities Permits.

(a) The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that is a part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit.

(b) Applications for a pipeline facilities permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the pipeline facilities permit and for complying with this subchapter.

(d) The owner or operator of more than one grandfathered reciprocating internal combustion engine may apply for a pipeline facilities permit for a single grandfathered reciprocating internal combustion engine or a group of the grandfathered reciprocating internal combustion engines connected to or part of a gathering or transmission pipeline.

§116.776. Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.

(a) Eligible facilities. Owners or operators of grandfathered reciprocating internal combustion engines are eligible for reimbursement of a portion of the cost of controls from the Emissions Reductions Incentives Account based on the following criteria.

(1) The owner or operator of the grandfathered reciprocating internal combustion engine or engines must make an actual 50% reduction in the annual emissions of nitrogen oxides (NO_x) as compared to the emissions reported from the grandfathered reciprocating internal combustion engine or engines in the 1997 Industrial Point Source Emissions Inventory.

(2) The grandfathered reciprocating internal combustion engine or engines must be located in the East Texas region as defined in §101.330 of this title (relating to Definitions).

(3) The owner or operator must apply for and receive a pipeline facilities permit or replace the grandfathered reciprocating internal combustion engine with an electric engine.

(4) The project to control emissions must be initiated on or before September 1, 2006.

(5) The project to control emissions must be completed before March 1, 2007.

(6) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the Emissions Reductions Incentives Account is sought, must identify, at the time the permit application is filed, the facilities for which reimbursement is requested.

(7) The owner or operator who elects to replace a grandfathered reciprocating internal combustion engine with an electric engine must submit a Registration of Replacement of a Grandfathered Reciprocating Internal Combustion Engine with an Electric Engine before the owner or operator can request a distribution from the Emissions Reductions Incentives Account.

(8) The emissions controls identified in the permit must be operating before the executive director can authorize payment from the Emissions Reductions Incentives Account.

(9) For grandfathered reciprocating internal combustion engines replaced by electric engines, the electric engine must be installed and operating and the grandfathered reciprocating internal combustion engine must be permanently shut down before the executive director can authorize payment from the Emissions Reductions Incentives Account.

(10) Facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement.

(b) Limitations on reimbursement. The commission may reimburse the owner or operator of a grandfathered reciprocating internal combustion engine or engines for no more than the cost associated with achieving emissions reductions between 30% and 50% of the engine's hourly emissions of NO_x before the addition of controls. The commission may distribute less than the amount calculated in this manner based on the amount of money contributed to the fund and the criteria for distribution outlined in subsection (c) of this section.

(c) Criteria for distribution. The commission will distribute any money in the fund based on the following criteria:

(1) whether the facility is located in an attainment area for ozone or a near nonattainment area for ozone;

(2) the percentage of reduction in the hourly emissions of NO_x on a grams per brake horsepower-hour basis achieved;

(3) the cost effectiveness of the controls achieved based on the tons of emissions actually reduced per dollar of the cost of the control method; and

(4) when the reductions are actually achieved.

(d) Verification of emissions reductions. Prior to reimbursement from the Emissions Reductions Incentives Account, the owner or operator of each grandfathered reciprocating internal combustion engine must provide documentation verifying the amount of actual emission reductions achieved.

§116.779. Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.

(a) Any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the grandfathered facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit may have provisions for measuring the emission of air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by EPA under authority granted under FCAA, §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA Section 112, 40 CFR 63)).

(6) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(b) In addition to the requirements of subsection (a) of this section, an application for a pipeline facilities permit shall propose a control method and identify the date by which the control method will be implemented. The proposed control method shall demonstrate compliance with the following requirements.

(1) Facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), shall demonstrate that each grandfathered reciprocating internal combustion engine will achieve at least a 50% reduction of the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower-hour (g/bhp-hr). The commission may also require a 50% reduction of the hourly emissions rate of volatile organic compounds (VOC), expressed in terms of g/bhp-hr for each engine located in the East Texas region as defined in §101.330 of this title.

(2) The commission shall require up to a 20% reduction of the hourly emissions rate of NO_x and may also require up to a 20% reduction of the hourly emissions rate of VOC, both expressed in terms of g/bhp-hr, from grandfathered reciprocating internal combustion engines located in the West Texas region as defined in §101.330 of this title or El Paso County.

(3) Notwithstanding the requirements of paragraphs (1) and (2) of this subsection, the owner or operator of more than one grandfathered reciprocating internal combustion engine may average the reductions achieved among more than one reciprocating internal combustion engine connected to or part of a gathering or transmission pipeline in order to demonstrate the reductions required in paragraphs (1) and (2) of this subsection. If the owner or operator chooses to average among engines located in both the East and West Texas regions as defined in §101.330 of this title it must be demonstrated that the sum of the reductions achieved from all of the engines located in the East Texas region as defined in §101.330 of this title will achieve the reductions required in paragraph (1) of this subsection. For purposes of this paragraph, El Paso County is included in the West Texas region as defined in §101.330 of this title.

(4) If the emissions reductions required by paragraphs (1) and (2) of this subsection will be achieved by averaging reductions as allowed by paragraph (3) of this subsection, the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by paragraphs (1) and (2) of this subsection will be achieved at one account, the reduction may include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

(c) In addition to the requirements of subsection (a) of this section, an application for an existing facility permit shall propose an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility. The application shall identify the date by which the control method will be implemented.

§116.780. Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.

(a) An applicant for a pipeline facilities permit or an existing facility permit shall publish a notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the pipeline facilities permit application or the existing facility permit application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any request for a notice and comment hearing must be made in writing during the 30-day public comment period.

(c) Any notice and comment hearing regarding initial issuance of a pipeline facilities permit or an existing facility permit shall be conducted in accordance with the procedures in §116.781 of this title (relating to Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a pipeline facilities permit or an existing facility permit will be conducted in accordance with the procedures in §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

(e) A person affected by a decision to issue or deny a pipeline facilities permit or an existing facility permit may seek review, as appropriate, 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, relating to Appeal of Commission Action.

§116.783. Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications.

(a) After the public comment period expires or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the pipeline facilities permit application or the existing facility permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the executive director may file a motion to overturn 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, relating to Appeal of Commission Action.

§116.787. Amendments and Alterations of Permits Issued Under this Division.

The owner or operator planning the modification of a facility permitted under this division relating to small business stationary source permits, pipeline facilities permits, and existing facility permits must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this division are subject to the requirements of Subchapter B of this chapter.

§116.790. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits.

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

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DIVISION 3. EXISTING FACILITY FLEXIBLE PERMITS

30 TAC §§116.793 - 116.802, 116.804 - 116.807

STATUTORY AUTHORITY

The new sections are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.061, which provides for delegation of powers and duties to the executive director; TWC, §5.103, which authorizes the commission to adopt rules; and §5.122, which provides for delegation of uncontested matters to the executive director.

§116.797. Notice of Final Action on Existing Facility Flexible Permit Applications.

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the existing facility flexible permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change; and

(3) a statement that any person affected by the decision of the executive director may file a motion to overturn 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, relating to Appeal of Commission Action.

§116.807. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this division, relating to existing facility flexible permits.

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

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SUBCHAPTER I. ELECTRIC GENERATING FACILITY PERMITS

30 TAC §§116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, 116.930

STATUTORY AUTHORITY

The amendments and new sections are adopted under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.061, which provides for delegation of powers and duties to the executive director; TWC, §5.103, which authorizes the commission to adopt rules; and §5.122, which provides for delegation of uncontested matters to the executive director.

§116.911. Electric Generating Facility Permit Application.

(a) Owners or operators of grandfathered or electing electric generating facilities (EGF) shall submit an application to authorize nitrogen oxides (NO_x) emissions and, if applicable, sulfur dioxide (SO_2) and particulate matter (PM) emissions. The application must include a completed Form PI-1-U, General Application. The Form PI-1-U must be signed by an authorized representative of the applicant. The Form PI-1-U specifies additional support information which must be provided before the application is deemed complete. In order to be granted an electric generating facility permit (EGFP), the owner or operator shall submit information to the commission which demonstrates that all of the following are met.

(1) Measurement of emissions and performance demonstration. Applicants must propose monitoring and reporting for the measurement of emissions and demonstration of performance consistent with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(2) Control method. New control methods proposed in initial applications must comply with the requirements in §116.617(1), (3), (4)(A), and (B) and (5) - (9) of this title (relating to Standard Permit for Pollution Control Projects).

(3) Air dispersion modeling or ambient monitoring for pollution control projects. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's Air Permits Division where there is an increase in emissions to determine the air quality impacts from controls proposed under paragraph (2) of this subsection.

(4) Opacity limitations for coal-fired grandfathered and electing EGFs. The coal-fired grandfathered and electing EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(b) Application information for electing EGFs.

(1) In addition to the information required in this section, EGFP applications regarding electing EGFs shall contain the following information:

(A) documentation of the emissions from the 1997 Emissions Scorecard from the EPA Acid Rain Program, or if that information is not available, the actual emissions from that electing EGF for calendar year 1997;

(B) documentation of fuel consumption, fuel heating values, and heat input in millions of British thermal units (MMBtu) for calendar year 1997;

(C) identification of the electing EGFs to be included.

(2) Emissions of air contaminants from electing EGFs other than NO_x, and if applicable, SO_2 and PM, already authorized by Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), will not be authorized under this subchapter.

(c) The owner or operator of a grandfathered or electing EGF must submit an application for a permit under this subchapter on or before September 1, 2000.

(d) Any grandfathered natural gas-fired EGF for which a permit application was filed under subsection (a) of this section, or for which a permit has been obtained in accordance with subsection (a) of this section, or which is excluded in accordance with §116.910(d) of this title (relating to Applicability) from the requirement to submit an application under subsection (a) of this section is considered permitted for the emissions of all air contaminants from that EGF.

(e) An owner or operator of a grandfathered coal-fired EGF with a permit issued in accordance with subsection (a) of this section or with an application pending under subsection (a) of this section may submit an application for an EGFP in accordance with to §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites) to authorize the emissions of all criteria pollutants from the EGF other than NO_x, SO_2, and PM as it relates to opacity.

(f) An owner or operator of a grandfathered or electing EGF with a permit application pending under subsection (a) of this section or a permit issued in accordance with subsection (a) of this section may submit an application for an EGFP in accordance with §116.917 of this title to also authorize each of the following types of facilities that are located at the same site as the EGF:

(1) a generator that does not generate electric energy for compensation and is used not more than 10% of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons per year of any air contaminant.

(g) Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (e) of this section must be submitted by September 1, 2003. Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (f)(1) or (2) of this section must be submitted by September 1, 2002. Any additional controls specified in an EGF permit issued in accordance with an application filed under §116.917 of this title are subject

to the schedule outlined in §116.771 of this title (relating to Implementation Schedule for Additional Controls.)

(h) Emissions of air contaminants from facilities identified in subsection (f)(1) or (2) of this section must be included in each applicable emissions allowance trading program under Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading Allowances). The commission will not issue any new emissions allowance for the emissions of any air contaminant from such a facility.

(i) All applications for an EGFP shall be submitted under the seal of a Texas licensed professional engineer if required by §116.110(e) of this title (relating to Applicability).

§116.913. General and Special Conditions.

(a) The following general conditions shall be applicable to every electric generating facility permit (EGFP) unless otherwise specified in the permit.

(1) A permit issued under this subchapter may authorize the following:

(A) for grandfathered natural gas-fired electric generating facilities (EGFs), emissions of all air contaminants;

(B) for grandfathered coal-fired EGFs, nitrogen oxides (NO_x) emissions, sulfur dioxide (SO_2) emissions, and particulate matter (PM) through opacity limitations as specified in §111.111 of this title (relating to Requirements for Specified Sources);

(C) for electing natural gas-fired EGFs, allowances for NO_x emissions;

(D) for electing coal-fired EGFs, allowances for NO_x emissions, allowances for SO_2 emissions, and PM through opacity limitations as specified in §111.111 of this title; and

(E) for facilities identified in §116.917(a) of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites), emissions of all criteria pollutants.

(2) Permits for grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with grandfathered or electing EGFs and permitted under Subchapter H of this chapter (relating to Permits for Grandfathered Facilities) may be consolidated with a permit issued under this subchapter.

(3) The owner or operator of a grandfathered EGF, an electing EGF, and if applicable, any facility included in an EGFP under §116.917 of this title, must comply with Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances) including the requirement to maintain allowances in a compliance account. Allowances may be transferred in accordance with §101.335 of this title (relating to Allowance Banking and Trading).

(4) Mass emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(5) On June 1 after every control period, the owner or operator shall hold a quantity of allowances for emissions of NO_x and, where applicable, SO_2, in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period for each EGF permitted in accordance with §116.911(a) and (b) of this title (relating to Electric Generating Facility Permit Application) and for each facility permitted in accordance with §116.917 of this title.

(6) Owners or operators shall submit a report of the amount of emissions of each allocated air contaminant, from the prior control period to the Air Permits Division consistent with the requirements of §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(7) Coal-fired grandfathered and electing EGFs must meet the opacity limitations of §111.111 of this title.

(8) Natural gas-fired EGFs that were designed to also burn fuel oil may burn any American Society for Testing and Materials (ASTM) grade fuel oil or mixture of ASTM grade fuel oils containing not more than 0.7% sulfur by weight as determined by ASTM Method D 396. Burning of fuel oil does not relieve the owner or operator of the EGF from the responsibility to comply with the emission limitations, allowances, or conditions of any permit or state or federal regulation. The burning of waste or used oils is not authorized by this subchapter.

(9) Owners or operators of natural gas fired EGFs that were designed to also burn fuel oil shall submit an annual report for the EGFs that burned fuel oil during each control period. The report shall include the names of the unit(s) burning fuel oil, the date(s) that fuel oil is burned, the amount of fuel oil burned, and the ASTM grade(s) of the fuel oil or fuel oil mixture that is burned. This report shall be included with the report required by §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(b) Special conditions may be included in the EGFP.

§116.917. Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

(a) Any application for an electric generating facility permit (EGFP) for additional criteria pollutants from grandfathered coal-fired electric generating facilities (EGFs) identified in §116.911(e) of this title (relating to Electric Generating Facility Permit Application) or for grandfathered facilities identified in §116.911(f)(1) or (2) of this title (relating to Electric Generating Facility Permit Application) must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit for a grandfathered facility under this section, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the grandfathered facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The EGFP may have provisions for measuring the emission of air contaminants as determined by the commission. These may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the EPA under authority granted in accordance with FCAA, §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from each facility as defined in 40

CFR Part 61 will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by the EPA under authority granted in accordance with FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by the EPA in accordance with FCAA, §112, or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, Section 112, 40 CFR 63)).

(6) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after an EGFP has been issued in order to demonstrate further that the grandfathered facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the electric generating facility permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(b) Upon request, the commission shall consolidate an application submitted in accordance with this section with an application pending in accordance with §116.911(a) of this title.

(c) Applications submitted in accordance with this section are subject to the requirements of §116.920 of this title (relating to Public Participation for Initial Issuance).

§116.928. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this subchapter. Section 116.922(b)(3) of this title (relating to Notice of Final Action) provides notification that any person affected by a decision of the commission may petition for rehearing. Notwithstanding §116.922(b)(3) of this title, any Notice of Final Action sent regarding a permit action under this subchapter will state that a person affected by a decision of the executive director may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) rather than a petition for rehearing.

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

Filed with the Office of the Secretary of State on May 23, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
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For further information, please call: (512) 239-4712

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CHAPTER 214. SECONDARY CONTAINMENT REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS LOCATED OVER CERTAIN AQUIFERS

30 TAC §§214.1 - 214.3

The Texas Natural Resource Conservation Commission (commission) adopts new Chapter 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers, §§214.1 - 214.3. Sections 214.1 - 214.3 are adopted *without changes* to the proposed text as published in the February 15, 2002 issue of the *Texas Register* (27 TexReg 1100) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement House Bill (HB) 2912, Article 13, §13.01 and Article 18, §18.13, 77th Legislature, 2001. House Bill 2912 adds Texas Water Code (TWC), §26.3476, Secondary Containment Required For Tanks Located Over Certain Aquifers. TWC, §26.3476, specifies that an underground storage tank (UST) system, at a minimum, shall incorporate a method for secondary containment if the system is located in the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and a county that has a population of at least one million and relies on groundwater for at least 75% of the county's water supply or has a population of at least 75,000 and is adjacent to a county that has a population of at least one million and relies on groundwater for at least 75% of the county's water supply.

TWC, §26.3476, applies only to a UST system that is installed, upgraded, or replaced on or after September 1, 2001 and applies only to the outcrop of the Edwards (Balcones Fault Zone) and Trinity aquifers in northern Bexar and Comal Counties as defined by the Texas Water Development Board (TWDB). For the limited areas where it is unclear as to which agency rules are applicable (30 TAC Chapter 213 concerning Edwards Aquifer, the Chapter 214 rules, or the statewide 30 TAC Chapter 334 rules concerning Underground and Aboveground Storage Tanks), the executive director will make a determination on a case-by-case basis.

SECTION BY SECTION DISCUSSION

New §214.1 sets forth the purpose of the chapter by providing the requirements for secondary containment for UST systems in certain aquifers.

New §214.2 sets forth and defines terms used in the chapter. Where the statute did not define terms, the commission relied on definitions in Chapter 334; Title 40 Code of Federal Regulations (CFR) Part 280 of the United States Environmental Protection Agency (EPA) rules; and on standard geologic terms and definitions. The definition for "Ancillary equipment" is identical to that which appears in §334.2 and clarifies what is included as part of a UST system. The definition for "Existing UST system" is identical to that which appears in §334.2 and is needed to clarify when a UST system is considered to be existing and subject to being "upgraded." A definition for "major aquifer" is included as new §214.2(3) as this term is included but not defined in statute. The TWDB has been given the authority to define aquifers in the state under TWC, Chapter 16 and has mapped the outcrop and regional extent of major aquifers within the state. They have defined a major aquifer as supplying large quantities of water in large areas of the state. The definition for "New UST system" is identical to that which appears in §334.2 and is needed to clarify when a UST system is considered to be new by definition and subject to being "upgraded" under the requirements of this chapter. The definition for "Outcrop" is included to define the geographic area within a major aquifer which is subject to the secondary containment requirements. These areas are mapped by the TWDB and define the area where the aquifer is exposed at the land surface. The definition for "Replaced" clarifies that the UST system which replaces one which is permanently removed from service is subject to the secondary containment requirements of this chapter. The definition for "Secondary containment" reflects the statutory definition in TWC, §26.3476(a). The definition in the statute provides examples of secondary containment systems. For further clarification, other secondary containment devices such as containment boots, sumps, and jackets are also included in the definition. The definition for "Underground storage tank (UST)" is identical to that which appears in §334.2 and defines the components that are considered part of a UST. The definition for "Underground storage tank (UST) system" is identical to the definition contained in 40 CFR Part 280. The definition of UST system in §334.2 applies only to new UST systems installed on or after September 29, 1989. Any new UST system installed after December 22, 1988 and before September 29, 1989 will not be covered under the Chapter 334 rules. Therefore, to ensure that this rule covers all new UST systems installed after December 22, 1988, EPA's definition of UST system in 40 CFR §280.12 is used. The definition for "Upgraded" clarifies when a UST system is subject to secondary containment requirements.

New §214.3 sets forth the applicability of the chapter. These rules are additional requirements beyond those in Chapter 213 and Chapter 334 and apply to USTs which are installed, upgraded, or replaced on or after September 1, 2001. The geographic area and aquifers where these rules apply is defined.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.225, 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 is one 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 implements HB 2912, Article 13, §13.01 and Article 18, §18.13. These sections specify that any person who installs, upgrades, or replaces a UST system on or after September 1, 2001 over certain major aquifers will have to ensure that a secondary containment system is incorporated into the system. The rules are intended to provide increased environmental protection over certain major aquifers by requiring new, upgraded, or replaced USTs to use secondary containment systems. Based on the requirements of the bill, the commission anticipates that only USTs located in the outcrop of the Edwards (Balcones Fault Zone) and Trinity aquifers in northern Bexar and Comal Counties will be affected by the rules. The fiscal analysis indicates that there will be adverse fiscal implications to small or micro-business that own or operate UST systems in the outcrop of the Trinity and Edwards (Balcones Fault Zone) aquifers that have to utilize a secondary containment system to comply with the rules; however, it will not affect this sector of the economy in a material way. There are at least 267 existing UST facilities, the majority of which are owned by small or micro-businesses, located in the affected areas; however, these systems will not be required to install a secondary containment system unless the storage tanks are upgraded or replaced subsequent to the effective date of the statute. As such, these rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or sector of the state.

Even if these rules met the definition of a major environmental rule, §2001.0225 only applies to a major environmental rule the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a major environmental rule. There are no equivalent standards set by federal law for secondary containment requirements in certain aquifers provided in HB 2912. This rule is specifically required by state law. This rulemaking does not exceed an express requirement of state law because this rulemaking specifically implements HB 2912, Article 13, §13.01 and Article 18, §18.13, 77th Legislature, 2001. The rulemaking does not exceed a requirement of a delegation agreement. Also, the rulemaking was not developed solely under the general powers of the agency, but was specifically authorized under TWC, §26.3476.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and analyzed whether the adopted rules are subject to Texas Government Code, §2007.003 and §2007.043. Texas Government Code, Chapter 2007, relating to governmental action affecting private property rights does not apply to actions taken by the government that are: 1) reasonably taken in response to a real and substantial threat to public health and safety; 2) designed to significantly advance the health and safety purpose; and 3) do not impose a greater burden than is necessary to achieve the health and safety purpose (Texas Government Code, §2007.003(13)). This rulemaking implements HB 2912, which

provides increased environmental protection to certain aquifers by requiring secondary containment systems for UST systems that are installed, replaced, or upgraded after September 1, 2001 in northern Bexar and Comal Counties. Legislative history indicates that this statute was enacted because there was concern that these aquifers, which are an important source of drinking water, are not adequately protected. Bill analyses for these provisions also indicate that these requirements were introduced to address spills such as the one that took place at a gas station in July 1999, that caused more than 800 gallons of gasoline to spill into the Trinity Aquifer in Bexar County. Fiscal analysis indicates that there are at least 267 existing UST facilities, the majority of which are owned by small or micro-businesses, located in the affected areas; however, these systems will not be required to install a secondary containment system unless the storage tanks are upgraded or replaced subsequent to the effective date of the statute. By applying only to UST systems that are installed, replaced, or upgraded after September 1, 2001, the rules do not impose a greater burden than is necessary to significantly advance the health and safety purpose.

Based on this assessment, this rulemaking action will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has prepared a consistency determination for the adopted rules under 31 TAC §505.22, and has found that the rulemaking is consistent with the applicable Texas Costal Management Program (CMP) goals and policies. The rulemaking is subject to the CMP and must be consistent with applicable goals and policies which 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). This rulemaking implements HB 2912, §13.01 and §18.13. The 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.

PUBLIC HEARING AND COMMENTERS

No public hearing was held on this rulemaking, and no public comments were submitted during the comment period.

STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203180

Stephanie Bergeron
Director, Environmental Law Division
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For further information, please call: (512) 239-4712

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.11

The General Land Office (Land Office) adopts amendments to 31 Texas Administrative Code (TAC) §15.11, relating to Certification of Local Government Dune Protection and Beach Access Plans (Plans). The amendments are adopted with changes to the proposed text as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3024).

Under §61.015 of the Open Beaches Act (Texas Natural Resources Code, Chapter 61), and §15.3(o) of the Land Office's beach/dune rules (31 TAC §§15.1-15.10), a local government with jurisdiction over public beaches fronting the Gulf of Mexico must submit a Plan to the Land Office. The Land Office reviews such Plans and certifies by rule those Plans that are consistent with the Open Beaches Act, the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the beach/dune rules.

The adopted amendments will function as conditional certifications that will allow for implementation of the respective Plan provisions. The amendment to §15.11(a)(10) and the addition of §15.11(b)(3) are adopted to conditionally certify the establishment of a beach user fee in the beach user fee portion of the City of Corpus Christi's (Corpus Christi's) Plan. The amendment to §15.11(b)(1) is adopted to conditionally certify the special events portion of the City of Galveston's (Galveston's) Plan. The conditional certification of the special events portion of Galveston's Plan carries its own 180-day conditional certification period, and does not change the timeframe of the 180-day conditional certification period for the remainder of Galveston's Plan, adopted August 12, 1993, and amended February 9, 1995, and June 19, 1997. After the filing of this proposed rule in the *Texas Register*, both Corpus Christi and Galveston submitted amended ordinances, amending their Plans, that satisfied the issues raised by the Land Office in its comments sent to Corpus Christi on March 19, 2002, and to Galveston on March 11, 2002, and March 27, 2002. The Land Office will evaluate the amended Plans, pursuant to §15.3 of the beach/dune rules, to determine whether the Plan amendments are consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and 31 TAC, Chapter 15, Subchapter A.

The adopted amendments to conditionally certify Corpus Christi's Plan and Galveston's Plan are subject to the Texas Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the Coastal Management Program, and must be consistent with the applicable

CMP goals and policies under §501.14(k) of this title, relating to Construction in the Beach/Dune System. The Land Office has reviewed these proposed actions for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed actions are consistent with the Land Office's beach/dune rules that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed actions are consistent with the applicable CMP goals and policies.

No comments were received regarding the proposed amendments to this rule, and there were no requests for the two takings impact assessments that were prepared by the Land Office for the adopted amendments.

The amendments are adopted under Texas Natural Resources Code, Chapter 61. Specifically, the amendments are adopted under Texas Natural Resources Code §61.011(d)(5), which authorizes the Land Office to adopt rules related to the certification of beach access and use plans; §61.015(b), which provides that certification of local government plans shall be by adoption into the beach/dune rules; and §61.022(c), which requires that the Land Office certify consistency of vehicular plans and fees by adoption into the beach/dune rules.

Texas Natural Resources Code §§61.011(d), 61.015, and 61.022 are affected by the adoption of these amendments.

§15.11. Certification of Local Government Dune Protections and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

(1) Brazoria County (adopted August 9, 1993, amended September 27, 1993);

(2) Chambers County (adopted August 9, 1993);

(3) City of Port Aransas (adopted February 15, 1995);

(4) City of Port Arthur (adopted April 12, 1993);

(5) Jefferson County (adopted August 16, 1993, amended March 7, 1994);

(6) Matagorda County (adopted February 13, 1995). The General Land Office certifies that the Beach User Fees section of the Matagorda County plan adopted by the Matagorda County Commission Court on March 15, 1999, is consistent with state law.

(7) Town of Quintana (adopted August 11, 1993);

(8) Village of Jamaica Beach (adopted August 16, 1993, amended December 6, 1993);

(9) Town of South Padre Island (adopted October 5, 1994);

(10) City of Corpus Christi (adopted August 10, 1993), with conditional certification of the beach user fee portion of the plan, adopted by Corpus Christi by ordinance on January 15, 2002, and amended on February 19, 2002, as authorized under subsection (b)(3) of this section;

(11) Cameron County:

(A) Plan (adopted September 20, 1994). The 440-foot building line established in the Cameron County plan, Section III.I, shall not be operative unless it is landward of the line of vegetation. The line of vegetation shall be established as required in the Open Beaches Act, Texas Natural Resources Code, §61.017.

(B) Padre Shore Ltd. Final Master Plan Amendment (adopted November 5, 1996).

(12) Nueces County

(A) Plan (adopted March 25, 1992, amended October 23, 1996).

(B) La Concha master plan. The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County commissioners court on March 20, 1996, is consistent with state law.

(C) Palms at Waters Edge master plan: The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County commissioners court on December 27, 1996, is consistent with state law.

(D) Mustang Island Episcopal Conference Center master plan. The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioners Court on January 31, 2000, is consistent with state law.

(13) Village of Surfside Beach (adopted December 12, 2000).

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended February 9, 1995, June 19, 1997, and February 14, 2002).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title, (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of $200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

(C) The conditional certification of the special events portion of the City of Galveston's plan, adopted by the City of Galveston by ordinance on February 14, 2002, is valid for 180 days, during which time the City of Galveston will modify the special events portion of its plan to be consistent with the General Land Office comments submitted to the City of Galveston (March 11, 2002 and March 27, 2002).

(2) Galveston County (adopted August 16, 1993). This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(3) City of Corpus Christi beach user fee portion of its dune protection and beach access plan, adopted by the City of Corpus Christi by ordinance on January 15, 2002, and amended on February 19, 2002. This certification of the beach user fee portion of the City of Corpus Christi's dune protection and beach access plan is valid for 180 days, during which time the City of Corpus Christi will modify the beach user fee portion of its plan consistent with the General Land Office comments submitted to the City of Corpus Christi (March 19, 2002).

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Texas Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, §§15.1 - 15.10 of this title (relating to Management of the Beach/Dune System).

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) Withdrawal of conditional certification. Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdrawing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

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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Larry Soward
Chief Clerk
General Land Office
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For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §301.5, §301.6

The State Board of Trustees for the Texas Statewide Emergency Services Personnel Retirement Fund (Fund) adopts amendments to rules, 34 Texas Administrative Code §301.5, relating to billings and annual reports, and §301.6, relating to local boards of trustees without changes to the proposed text as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1992).

These amendments were originally proposed for public comment in the January 18, 2002 issue of *Texas Register* (27 TexReg 464). Due to substantive changes, these proposed amendments were withdrawn and re-proposed for public comment in the March 15, 2002 issue of *Texas Register* (27 TexReg 1992).

Rule 301.5 is amended in order to establish a procedure for the governing entity of a department to request an extension of payment of its fund contribution, to request a waiver of a late annual report penalty, and to request an appeal of a waiver denial. In addition, the Commissioner is given the authority to make a decision, without the approval of the state board, regarding the withholding of an individual's pension payments when a local board cannot verify a recipient's eligibility to receive payments due to the recipient's failure to cooperate or to provide information. As the state board meets quarterly, giving the Commissioner this authority shortens the amount of time until action can be taken to address the issue. The amendment also establishes a procedure and requirements for correcting service records for prior years of service on annual reports. In addition, Art. 6243e.3, section 23B mandates the withholding of payments to individuals who do not provide a local board with the information it requests to verify the person's eligibility to receive benefits. Therefore, the rule is changed to make the withholding of payments mandatory and not discretionary.

Rule 301.6 is amended in order to clarify that when there are 5 or less volunteer members in a department, all volunteer members must be on the local board of trustees.

There were no comments received regarding the proposed amendments.

The amendments are adopted under Texas Revised Civil Statutes, Article 6243e.3, §21 that provides the Board of

Trustees with the authority to establish rules necessary for the administration of the Fund.

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

Filed with the Office of the Secretary of State on May 24, 2002.

TRD-200203231
Morris E. Sandefer
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: June 13, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 936-3372

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER H. PROFESSIONAL CONDUCT

37 TAC §1.114

The Texas Department of Public Safety adopts an amendment to §1.114, concerning Major Infraction Applicable to Any Member, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2202).

Amendment to the section adds new paragraph (14) which is necessary as a result of the passage of Tex. S.B. 1074, Acts 2001, 77th Leg., R.S. ch. 947, §1, which prohibits a peace officer from engaging in racial profiling and grants rulemaking authority to the Texas Department of Public Safety.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203215
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 424-2135

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CHAPTER 17. ADMINISTRATIVE LICENSE REVOCATION

SUBCHAPTER A. ADMINISTRATIVE LICENSE REVOCATION

37 TAC §§17.2 - 17.4, 17.6, 17.13, 17.15

The Texas Department of Public Safety adopts amendments to §§17.2-17.4, 17.6, 17.13 and 17.15, concerning Administrative License Revocation, without changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2205).

The amendments are necessary to incorporate recent changes to Texas Transportation Code, Chapters 524 and 724 resulting from the passage of Tex. H.B. 63, Acts 2001, 77th Leg., R.S., ch. 444. Revisions to certain definitions contained in §17.2 were also required to reflect changes in other departmental rules. In addition, language regarding the collection of the reinstatement fee following a disqualification has been deleted in §17.15.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §524.002 and §724.003, which provide that the department may adopt rules to administer those chapters.

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

Filed with the Office of the Secretary of State on May 23, 2002.

TRD-200203214
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 12, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 424-2135

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §§141.3, 141.5, 141.7

The policy board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§141.3, 141.5, and 141.7, concerning the general conditions for the governance of the Board of Pardons and Paroles. The amendments are adopted without changes as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2207). The text of the rule will not be republished.

The Board of Pardons and Paroles has adopted these amendments in order to conform the rules to statutory language and to clarify language in regard to the duties of the policy board.

Gerald Garrett, the Chair of the Board, has determined that, for the first five-year period the amended rules are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections. No anticipated economical corollary exists to small businesses or persons required to comply with the rule amendments.

Mr. Garrett has also determined that the public benefit anticipated as a result of these amended rules will be a clarification of the rules relating to the governance of the board.

No comments were received regarding the adoption of the amendments to the rules.

The amended rules are adopted under §508.036, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes used by the board and parole panels.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203150
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: June 11, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF INMATES

37 TAC §141.71

The policy board of the Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §141.71, concerning the general conditions for the governance of the Board of Pardons and Paroles. The amendment is adopted without changes as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2208). The text of the rule will not be republished.

The Board of Pardons and Paroles has adopted this amendment in order to update the statutory citation in this section.

Gerald Garrett, the Chair of the Board, has determined that, for the first five-year period the amended rule is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the section. No anticipated economical corollary exists to small businesses or persons required to comply with the rule amendment.

Mr. Garrett has also determined that the public benefit anticipated as a result of this amended rule will be a correction of the statutory citation to the Public Information Act.

No comments were received regarding the adoption of the amendment to the rule.

The amended rule is adopted under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes used by the board and parole panels.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203151
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: June 11, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 406-5458

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SUBCHAPTER D. REGISTRATION OF VISITORS AND FEE AFFIDAVITS

37 TAC §141.82

The policy board of the Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §141.82, concerning the general conditions for the governance of the Board of Pardons and Paroles. The amendment is adopted without changes as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2208). The text of the rule will not be republished.

The Board of Pardons and Paroles has adopted this amendment in order to update the statutory citation in this section.

Gerald Garrett, the Chair of the Board, has determined that, for the first five-year period the amended rule is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the section. No anticipated economical corollary exists to small businesses or persons required to comply with the rule amendment.

Mr. Garrett has also determined that the public benefit anticipated as a result of this amended rule will be the update of the statutory citation.

No comments were received regarding the adoption of the amendment to the rule.

The amended rule is adopted under §§508.036, 508.044, and 508.084, Government Code. The Board interprets §508.036 and §508.044 as authorizing the policy board to adopt reasonable rules relating to the decision-making processes used by the board and parole panels. The Board interprets §508.084 as authorizing the Board to require attorneys who represent offenders to submit fee affidavit forms.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203152

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: June 11, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 406-5458

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CHAPTER 145. PAROLE
SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.27

The policy board of the Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.27, concerning the conditions and rules of parole. The amendment is adopted without changes as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2209). The text of the rule will not be republished.

The Board of Pardons and Paroles has adopted this amendment in order to conform this section to the revised parole certificate.

Gerald Garrett, the Chair of the Board, has determined that, for the first five-year period the amended rule is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the section. No anticipated economical corollary exists to small businesses or persons required to comply with the rule amendment.

Mr. Garrett has also determined that the public benefit anticipated as a result of this amended rule will be to clarify that a standard requirement exists that all offenders participate in the Texas Department of Public Safety Personal Identification Program.

No comments were received regarding the adoption of the amendment to the rule.

The amended rule is adopted under §508.036 and §508.044, Government Code, relating to the policy board's duty to adopt rules concerning the decision-making processes and conditions of parole or mandatory supervision used by the board and parole panels.

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

Filed with the Office of the Secretary of State on May 22, 2002.

TRD-200203153
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: June 11, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 406-5458

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

37 TAC §429.5, §429.7

The Texas Commission on Fire Protection (TCFP) adopts amendments to §429.5 and §429.7, concerning minimum standards for intermediate and advanced fire inspector certifications with changes to the text published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1468). The term "listed" is replaced with "contained" in §§429.5(a)(2), 429.5(a)(2)(C), 429.7(a)(2), and 429.7(a)(2)(C).

The result of enforcing the amendments will be an increase in the number of eligible applicants for advanced certifications.

The amendments add a fourth option for meeting course requirements for each certification.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties, Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions, and Texas Government Code, §419.032, which provides the TCFP with authority to establish standards for employment as fire protection personnel.

§429.5. Minimum Standards for Intermediate Fire Inspector Certification.

(a) Applicants for Intermediate Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Fire Inspector Certification as defined in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses contained in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses contained in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§429.7. Minimum Standards for Advanced Fire Inspector Certification.

(a) Applicants for Advanced Fire Inspector certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector Certification as defined in §429.5 of this title (relating to Minimum Standards for Intermediate Fire Inspector Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses contained in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2--Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3--Successfully complete three semester hours of college courses contained in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4--Successfully complete any combination of courses that lead to International Fire Service Accreditation Congress (IFSAC) certification that total 96 recommended hours or more in the Commission curricula. Evidence of completion of the appropriate courses shall be a certification from the Commission or a valid documentation from another jurisdiction of accreditation from IFSAC. Option 4 may not be combined with any of the above options to obtain this certification. See exception outlined in subsection (d) of this section.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

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

Filed with the Office of the Secretary of State on May 20, 2002.

TRD-200203100
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 9, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 239-4921

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CHAPTER 461. GENERAL ADMINISTRATION

37 TAC §461.1

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §461.1, concerning voting guidelines for members of the Funds Allocation Advisory Committee (FAAC), without changes to the text published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1287).

The result of enforcing the amendment will be a clearer description of the role of the FAAC in processing applications for funding through the Fire Department Emergency Program (FDEP).

The amendment adds language to prevent committee members from voting on applications from their respective fire departments.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with authority to adopt rules for the administration of its powers and duties and Texas Government Code, §419.054, which provides the FAAC with authority to review the TCFP rules relating to the FDEP and to recommend changes in the rules.

Texas Government Code, §§419.052 - 419.063 are affected by the proposed 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 May 20, 2002.

TRD-200203101
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 9, 2002
Proposal publication date: February 22, 2002
For further information, please call: (512) 239-4921

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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.

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2001 AND 2002 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. A-0402-12-I) was published in the April 19, 2002 issue of the *Texas Register* (27 TexReg 3371).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2002 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0402-12-I, which are incorporated by reference into Commissioner's Order No. 02-0529.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98 and 5.101.

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).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200203190

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 23, 2002

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Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2001 AND 2002 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2001 and 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. A-0302-09-I) was published in the April 19, 2002 issue of the *Texas Register* (27 TexReg 3371).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2001 and 2002 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0302-09-I, which are incorporated by reference into Commissioner's Order No. 02-0528.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98 and 5.101.

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).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the Texas Register.

TRD-200203191

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 23, 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 Review

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 295. Occupational Health, Subchapter I. Texas Environmental Lead Reduction, §§295.201 - 295.220.

This review is in accordance with the requirements of the Texas Government Code, §2001.039.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200203188
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 23, 2002

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Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

The Department of Information Resources readopts without change the provisions of 1 T.A.C. §201.14, concerning digital signatures. The readoption is pursuant to the General Appropriations Act of 1999, House Bill 1, 76th Legislature, Article IX, Section 9-10.13, "Review of Agency Rules" and §2001.039, Government Code. The notice of intention to review §201.14 was published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1883). The department has determined that the reason for the initial adoption of the rule relating to digital signatures continues to exist and that the rule should be readopted. No comments were received concerning readoption of §201.14.

TRD-200203324
Renee Mauzy
General Counsel
Department of Information Resources
Filed: May 29, 2002

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 116, *Control of Air Pollution by Permits for New Construction or Modification*, in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a), which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 3218).

CHAPTER SUMMARY

Chapter 116 requires preconstruction authorization to be obtained prior to construction or modification of a facility which may emit air contaminants into the air of Texas. Chapter 116 consists of ten subchapters: Subchapter A, Definitions; Subchapter B, New Source Review Permits; Subchapter C, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major sources (FCAA §112(G), 40 CFR Part 63); Subchapter D, Permit Renewals; Subchapter E, Emergency Orders; Subchapter F, Standard Permits; Subchapter G, Flexible Permits; Subchapter H, Voluntary Emission Reduction Permits; Subchapter I, Electric Generating Facilities; and Subchapter J, Multiple Plant Permits.

Subchapter A, Definitions, contains definitions used in this chapter.

Subchapter B, New Source Review Permits, contains provisions addressing: applicability, permit applications; general and special conditions; compliance provisions; compliance history; public notification and comment procedures; permit fees; nonattainment review; prevention of significant deterioration review; and emission reductions offsets.

Subchapter C, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major sources (FCAA §112(G), 40 CFR Part 63), provides requirements for applicability, exclusions, and application and public notice requirements.

Subchapter D, Permit Renewals, provides requirements for notification of permit holder, permit renewal application, public notification and comment procedures, renewal application fees, and review schedule.

Subchapter E, Emergency Orders, provides for applicability of emergency orders.

Subchapter F, Standard Permits, provides requirements: for types of standard permits; issuance of standard permits; public participation in issuance of standard permits; duration and renewal of registrations to use standard permits; standard permit amendment and revocation; delegation; applicability; registration to use a standard permit; standard permit fees; general conditions; standard permits for pollution control projects; installation and/or modification of oil and gas facilities; and municipal solid waste landfills.

Subchapter G, Flexible Permits, provides requirements: for applicability; flexible permit application; application review schedule; general and special conditions; emission caps and individual emission limitations; implementation schedule for additional controls; significant emission increase; limitation on physical and operational changes; amendments and alterations; distance limitations; compliance history; public notice and comment; flexible permit fee; and flexible permit renewal.

Subchapter H, Voluntary Emission Reduction Permits, provides requirements: for eligibility; voluntary emission reduction permit (applications; project emission reduction credits; application review schedule; general and special conditions; deferral of emission reductions; modifications; public participation and initial issuance; notice and comment hearings for initial issuance; notice of final action; voluntary emission reductions permit application fee; voluntary emission reduction permit renewal; and delegation).

Subchapter I, Electric Generating Facilities, provides requirements: for applicability; electric generating facility (EGF) permit applications; general and special conditions; emissions monitoring and reporting requirements; permits for grandfathered and electing EGFs in El Paso County; public participation for initial issuance; notice and comment hearings for initial issuance; notice of final action; modifications; and renewal.

Subchapter J, Multiple Plant Permits, provides requirements: for applicability; multiple plant permit (MPP) applications; application review schedule; general and special conditions; modifications; amendments and alterations; MPP public notice; MPP public comment procedures; MPP application fee; MPP renewal; and delegation.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for Chapter 116 continue to exist. Chapter 116 implements critical provisions of the Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), Chapter 382, as well as 42 United States Code, §§7401 - 7671q, the Federal Clean Air Act (FCAA). Chapter 116 implements the commission's objectives to protect air quality through preconstruction review authorizations by providing procedures for action on any application for a permit for construction or modification or renewal of a permit for a facility that will emit air contaminants into the air of the state. Chapter 116 was originally adopted April 21, 1971, and has been amended to address changes to various state and federal statutes and federal regulations.

Chapter 116 was adopted and amended under THSC, TCAA, §382.017, concerning Rules and §382.051 concerning Permitting Authority of Commission.

Specifically, Chapter 116 implements THSC, TCAA, including §382.012, which provides for the state air control plan; §§382.015 - 382.017, which provide for the power to enter property; require monitoring, examination of records, and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures for sampling, and investigations; §§382.022 - 382.0205, which provide the commission authority to protect against adverse effects related to acid deposition; §§382.023 - 382.026, relating to agency orders and emergencies; §382.0365, relating to the small business stationary source assistance program; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue air permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §382.05101, which provides the commission authority to develop criteria or rules for de minimis air contaminants; §382.0511, which provides the commission authority to consolidate permits; §382.0512, relating to modification of an existing facility; §§382.0513 - 382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions, require sampling and monitoring, require permit applications, and determine administrative completeness of applications; §§382.0518 - 382.05196, 382.052, and 382.053, which provide for preconstruction permits; voluntary emissions reduction permits requirements, emission reduction, multiple plant permits, standard permits, and permits by rule, permits to construct or modify a facility within 3,000 feet of schools and prohibitions on the issuance of construction permits for lead smelting plants at certain locations; §382.055, relating to review and renewal of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings; §382.057 and §382.058, relating to exemptions; §382.058, relating to construction of certain concrete plants; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563; §382.062, which provides for application, permit and inspection fees; and under Texas Water Code (TWC), including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of TWC and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; and §5.122, which provides delegation of uncontested matters to the executive director. Section 116.112, Distance Limitations, implements the statutory provisions in the Texas Solid Waste Disposal Act, §361.102, concerning Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply.

Chapter 116 implements sections of Title I, Part A of the FCAA that relate to preconstruction permitting and establishment of enforceable emission limits, which includes, but is not limited to, FCAA, §110(a)(2)(A) and (C). In addition, Subchapter C implements the requirements of Title I, Part A of the 1990 FCAA, §112(g), as set forth in 40 Code of Federal Regulations (CFR) Part 63, §§63.40 - 63.44, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology (§112(g)). In proposing Chapter 116, Subchapter

C, the executive director certified that the proposed §112(g) program under Chapter 116 satisfied all applicable requirements established by 40 CFR §§63.40 - 63.44.

More specifically, Subchapter A, Division 5, Nonattainment Review, implements FCAA, Title I, Part D, Plan Requirements for Nonattainment Areas, including, but not limited to, §173, Permit Requirements. Subchapter A, Division 6, Prevention of Significant Deterioration implements FCAA, Title I, Part C, Prevention of Significant Deterioration of Air Quality, including, but not limited to, §165, Preconstruction Requirements and §167, Enforcement.

Chapter 116 also implements 40 CFR Part 51, Subpart I, Review of New Sources and Modifications; §51.165, Permit Requirements; and §51.166, Prevention of Significant Deterioration of Air Quality and the sections of 40 CFR Part 52, Subpart SS, Texas Implementation Plans, relating to preconstruction permitting and/or specific references to Chapter 116. Section 116.115 implements TCAA, §382.003 requirements for modifications and changes to permitted facilities.

In addition, Chapter 116 provides a compliance and enforcement mechanism for federal rules including, but not limited to: 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans; 40 CFR Part 52, Approval and Promulgation of Implementation Plans; 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Consumer and Commercial Products; 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS); 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS); and 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (HAPs) for Source Categories.

PUBLIC COMMENT

A public hearing was not held on this rules review. The public comment period closed May 13, 2002. No comments on whether the reasons for the rules continue to exist were received.

TRD-200203179
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 23, 2002

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The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 220, *Regional Assessments of Water Quality*, in accordance with the requirements of Texas Government Code, §2001.039 (added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a)), which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2265).

CHAPTER SUMMARY

In accordance with Texas Water Code (TWC), §26.0135, Chapter 220 establishes the Texas Clean Rivers (TCR) program, a water quality management program involving monitoring and assessment of water quality by watershed and river basin. Chapter 220 consists of two subchapters. Subchapter A establishes procedures for implementing the TCR program by monitoring and assessment of water quality conditions, by river basin, to 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)). Subchapter B establishes the Water Quality Assessment Fee program, which is authorized to recover no more than $5.0 million annually. The subchapter provides that the fees recovered shall be used only to accomplish the purposes of the TCR program.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 220 continue to exist. However, implementation of House Bill 2912, Article 3, §§3.04 - 3.06, 77th Legislature, 2001, which amended TWC, §26.0135, will necessitate substantial revision of this chapter. The commission has convened a rulemaking in Rule Log Number 2001-098-220-WT to revise Chapter 220, which would repeal and reformat provisions that are still applicable to the TCR program and move the fees to new Chapter 21, *Water Quality Fees*. The proposal for this rulemaking was published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3459).

PUBLIC COMMENT

The public comment period closed on April 22, 2002. No comments on whether the reasons for the rules continue to exist were received.

TRD-200203197
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 23, 2002

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.43(k)(3)(A)

Service Area	Affiliated REP	Tariff
Oncor	TXU Energy Services	Rate R — Residential Service
Centerpoint	Reliant Energy Services	Rate PTB-RS — Residential Service
AEP/CPL	Mutual Energy CPL	Rate SRS — Standard Residential Service
AEP/WTU	Mutual Energy WTU	Rate RS — Residential Service
TNMP	First Choice Power	Residential Service

Figure: 16 TAC §25.43(k)(3)(B)

Service Area	Affiliated REP	Tariff
Oncor	TXU Energy Services	Rate GS — General Service Secondary
Centerpoint	Reliant Energy Services	Rate PTB-MGS — Misc. General Service
AEP/CPL	Mutual Energy CPL	Rate LPS — Lighting and Power Service
AEP/WTU	Mutual Energy WTU	Rate GS — General Service
TNMP	First Choice Power	General Service

Figure: 16 TAC §25.43(l)(2)

$E_N = E_E * G_N / G_E$	
Where:	
E_N =	recalculated energy charge
E_E =	existing energy charge
G_N =	the average of the closing 12-month forward New York Mercantile Exchange (NYMEX) Henry Hub natural gas prices as reported in the *Wall Street Journal* for the last five business days of the month.
G_E =	the average of the closing 12-month forward NYMEX Henry Hub natural gas prices as reported in the *Wall Street Journal* for the last five business days preceding the bid due date for the first gas price adjustment of the POLR term. For subsequent adjustments, G_E = the average of the closing 12-month forward NYMEX Henry Hub natural gas prices as reported in the *Wall Street Journal*, at the time the existing energy charge was last adjusted.

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 May 17, 2002, through May 23, 2002. The public comment period for these projects will close at 5:00 p.m. on June 28, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Marker 1, Ltd.; Location: The project is located on Clear Lake at 3120 NASA Road 1 in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled League City, Texas. Approximate UTM Coordinates: Zone 15; Easting: 302200; Northing: 3271492. Project Descripton: The applicant proposes to construct 6 piers, a boardwalk along the shoreline, and to dredge the surrounding area for boat access. The purpose of the project is to construct a yacht club with a staging area and refueling station. The piers will be both fixed by wooden piles and floating by approved floatation devices. Fifty feet of pier 1 and all of pier 2 will be constructed with concrete fill to create an area for an upland crane to place the boats in the water. The fill for both piers is approximately 22.2 cubic yards of fill material. Approximately 3,000 cubic yards of material will be mechanically dredged and placed within an upland area. The dredging will be within 100 feet from shore to make a water depth of 4.5 feet for boat access. The current water depth at the authorized bulkhead is approximately -1.5 feet Mean Low Tide (MLT) and approximately -2 feet MLT at the end of pier 2. The depth of the water at piers 3,4,5, and 6 is -4.5 feet MLT. CCC Project No.: 02-0132-F1; Type of Application: U.S.A.C.E. permit application #22647 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).

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-200203338
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: May 29, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 06/03/02 - 06/09/02 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 06/03/02 - 06/09/02 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3] for the period of 06/01/02 - 06/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 06/01/02 - 06/30/02 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/02 - 09/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/02 - 09/30/02 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 07/01/02 - 09/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 07/01/02 - 09/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4]for the period of 07/01/02 - 09/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/02 - 09/30/02 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 07/01/02 - 09/30/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/02 - 06/30/02 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 06/01/02 - 06/30/02 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.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200203317
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 29, 2002

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Texas Council on Environmental Technology

Notice of Request for Proposals for RFP #02-R02, Assessment of Information Needs for Air Pollution Health Effects Research in Houston, Texas

1.0 INVITATION

The Texas Council on Environmental Technology (TCET) invites applications from persons or organizations to provide:

Assessment of Information Needs for Air Pollution Health Effects Research in Houston, Texas.

The TCET has been charged to make an evaluation of the health effects of air pollutants on Texas Citizens. To assist the Council in developing a multi-year air pollution health effects research strategy, a critical review of the information required for such assessments and the availability of data will be performed.

The Council seeks proposals from qualified individuals or organizations that would:

a. List and critically review extant epidemiological, exposure, and other pertinent studies done to date in Texas that have been conducted on health related issues of a general population (not occupation specific). Identify 1) what is known about air pollution health effects, and 2) exposure, lifestyle, and health issues that may be particularly important to Texas.

b. Focusing on the Houston Metropolitan Area, list available or potentially available data bases that contain relevant health/illness outcomes that have generally been used in previous health effects studies (these may include, for example, school absenteeism, respiratory health related hospital admissions, incidence of asthmatic attacks, incidence of childhood asthma) and corresponding data bases of air pollution indices (including those from the TNRCC) that are available for these areas. The nature of information contained in each available or potentially available data base should be listed and its limitations for health studies should be described.

c. Based on the available information, identify the most pressing information needs (both in regard to health indices and air pollution indices) that will be necessary to carry out a significant long range health effects study for the Houston Metropolitan area.

d. The award recipient will organize activities in consultation with the (Houston) Mayor's Committee on Health to ensure that the main and operational objectives described above are achieved. The Committee will provide guidance to develop and formulate a research strategy that builds on existing scientific research with focus on the health effects of air pollution in Houston, Texas, and that maximizes the utilization of existing local resources to extend the impact of the grant funding.

1.1 PURPOSE

The Texas Council on Environmental Technology (TCET) was established in 2001 by Senate Bill (S.B.) 5, 77th Texas Legislature. Senate Bill 5 authorized the Texas Council on Environmental Technology in Chapter 387 of the Texas Health and Safety Code, and among the Council charges, under Section 386.252, Use of Funds, is to:

a. Identify and evaluate new technologies; to seek the approval of the United States Environmental Protection Agency for those technologies, and to facilitate the deployment of those technologies,

b. assist the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency in the process of ensuring credit for new, innovative and creative technological advancements, and to

c. fund a study on the health effects of air pollution.

1.2 DELIVERABLES, SCHEDULE, AND ANTICIPATED FUNDING LEVEL

Only one award of up to $50,000 is anticipated under this portion of the TCET's programs. Additional support for successive health effects assessments may become available in the future.

The successful applicant for the Assessment of Information Needs for Air Pollution Health Effects Research will be required to:

a. Meet jointly with representatives from the Mayor's Committee and with the Council and Council staff to refine a scope of work, project tasks, milestones, the deliverables schedule, and to review a detailed outline of the assessment. These meetings will occur within 30 days of the date of the grant award.

b. Provide a final report, which responds to comments from the peer review panel and the TCET. The final report will be submitted within 180 days of the date of the grant award.

1.3 PROGRAM GUIDELINES

Grant application forms may be viewed and downloaded from the TCET Web site at www.tcet.state.tx.us. The materials may also be obtained by calling 512/232-5225.

To be eligible for funding consideration, grant applications must be prepared and submitted in accordance with this notice and the application forms.

1.4 ELIGIBLE APPLICANTS

Eligible applicants include individuals, universities*, corporations, organizations, governments or governmental subdivisions or agencies, business trusts, partnerships, associations, or any other legal entity.

*The Attorney General has ruled that universities or other organizations represented on the Texas Council on Environmental Technology are ineligible to receive grants from TCET. The university campuses excluded from receiving grants by having a member on the Council are UT Austin, The University of Houston, Texas A&M College Station, Texas A&M Kingsville, Rice University, Texas Tech University. The Dallas office of EPRI is also excluded. The Council will be particularly sensitive to issues of conflict of interest.

1.5 GENERAL REQUIREMENTS

a. All applications for funding must be completed according to the application instructions and submitted by the required deadline. The complete requirements and instructions are included in the application instruction forms.

b. Entities selected to receive grant funding will be required to execute a contract with the TCET. All services or work carried out under a contract awarded as a result of this RFP must be completed within the scope, timeframes, and funding limitations specified in the contract.

1.6 GRANT ADMINISTRATION AND REIMBURSEMENT OF EXPENSES

a. Payments will be made upon acceptable completion of project tasks and milestones by the grant recipient. Requests for payment may be submitted upon successful completion of project tasks/milestone as agreed to in the deliverables schedule.

b. Reports on the progress of completing the project activities will be required with each request for payment. Progress reports may also be required on a quarterly basis, even if no requests for payment are submitted during that time period. Reporting forms will be provided by the TCET.

c. All project activities must be completed before the end of the grant contract term, and all requests for payment and reports will need to be submitted within 45 days after termination of the contract. Ten percent of the contract amount will be allocated to completion of the final project report and will not be released until an approved final project report is provided.

1.7 FUNDING

TCET anticipates granting one award of up to $50,000, and may select parts of a proposal for funding and may offer to fund less than the dollar amount requested in a proposal.

2.0 APPLICATION PROCESS

Application forms and criteria on the activities eligible for funding under this program may be viewed and downloaded from the TCET Web site at www.tcet.state.tx.us. The materials may also be obtained by calling 512/232-5225, or by sending an email to proposal@tcet.state.tx.us.

a. **Required Forms.** To apply for funding, applicants must complete and submit a grant application, which includes the required information described in the instructions included with the application forms.

b. **Application Submission.** Applications shall be submitted to TCET in the following format:

1. All forms must be typed with 1 inch margins, 10 pt. font minimum size, and in any of the following formats: word, word-perfect, or excel.

2. An electronic version (.pdf, word or word-perfect) must be sent via email to proposal@tcet.state.tx.us .

3. A signed unbound original and 5 paper copies shall also be submitted via Regular, Express Mail, FedEx, or UPS to:

Texas Council on Environmental Technology

Center for Energy and Environmental Resources

The University of Texas at Austin

10100 Burnet Road, Building 133, MC R7100

Austin, Texas 78758

512-232-5225

c. **Deadline for Submission.**

1. Electronic proposals must be emailed during normal work hours (8a.m. to 5p.m.) and no later than 12:00 noon Central Standard Time on Thursday June 27, 2002. The email submittal address is proposal@tcet.state.tx.us or you may go to the TCET web page and click the link to Request for Proposals, then click Email Proposals. Your normal email program will start, and you should attach the file(s) to upload with the email. After sending, please wait an hour and then call Vickie Amidon at (512) 232-7006 to confirm that the email & attached file(s) were received

2. Paper copies of the proposal must be received on the premises of the TCET as directed herein by no later than 5:00 p.m. CST June 28, 2002.

3. Late proposals will not be considered for funding.

4. The TCET will not accept applications via FAX machine.

d. **Additional Program Information.** Individuals desiring further information are encouraged to email questions to proposal@tcet.state.tx.us.

e. **Status of Application.** Upon submission, all proposals become the property of the State of Texas and as such become subject to the Texas Open Records Act, V.T.C.S. art. 6252-17a.

3.0 SELECTION FACTORS AND WEIGHT ASSIGNED

a. Overall quality and completeness of the proposal, including clearly defined objectives and schedules. Up to 40 points (40 percent of total possible points).

b. Qualifications of applicants. Up to 40 points (40 percent of total possible points).

c. Cost effectiveness and matching funds or resources. Up to 20 points (20 percent of total possible points).

4.0 APPLICATION REVIEW AND SELECTION PROCESS

a. **Initial Review.** The TCET will review the applications for completeness and eligibility. If an application is found to be incomplete or ineligible for funding, the TCET will notify the applicant.

b. **Project Evaluation.** Properly completed applications for eligible projects will be evaluated and ranked by a peer review committee identified by the TCET.

c. **Project Selection List.** Based on the recommendations of the peer review committee, successful applicant(s) will be identified by the TCET.

d. **Grant Award and Contracting.** The awarding of a grant will be contingent upon the availability of funds in the TCET account. The applicant will be given a defined period of time to sign and return the grant contract.

TRD-200203222
David T. Allen, Ph.D.
Chair
Texas Council on Environmental Technology
Filed: May 24, 2002

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Notice of Request for Proposals for RFP #02-R03, Developing a Critical Assessment of Air Quality Technology Development Needs

1.0 INVITATION:

The Texas Council on Environmental Technology (TCET) invites applications from persons or organizations to:

Perform a Critical Assessment of Air Quality Technology Development Needs

Assessment of air quality technology development needs

Activities supported by this grant are to be directed toward characterizing and cataloguing emission reduction technologies that may be used in projects eligible for awards under Chapter 386 of Senate Bill 5 (77R.S.). The emission reduction technologies eligible for awards under Chapter 386 are designed to reduce the emissions of photochemical smog precursors.

To assist the Council in developing a long-range plan for catalyzing the deployment of existing and new emissions reduction technologies, respondents should perform a critical assessment of air quality technology development needs including a review of the status of existing and emerging technologies and characterization of emissions from source types and emissions reduction potential by source. These assessments should be done for non-attainment and near non-attainment areas in the state that have sufficiently detailed inventories of emissions. The Council seeks proposals from qualified individuals or organizations to assist the Council staff in performing these assessments.

Respondents should discuss their experience, skills, and qualifications to address the following issues concerning emissions control technologies:

a. Provide estimates of emissions from off-road, on-road, area, and stationary (point) NOx producing sources that are eligible for funding under SB5. Proposers should be able to provide realistic estimates of the amount of NOx emissions subject to reduction by available and by emerging technologies. By source category, estimate total potential emissions reduction possible from available and emerging technologies.

b. Identify, describe, and review available emission control technologies that could be used to address the emission sources identified in a). Assess and describe the verification status of identified control technologies and, where data exists, provide estimates of cost per defined unit of NOx reduced.

c. Assess and describe the status of emerging emissions control technologies and provide information available regarding verification.

1.1 PURPOSE

The Texas Council on Environmental Technology (TCET) was established in 2001 by Senate Bill (S.B.) 5, 77th Texas Legislature. Senate Bill 5 authorized the Texas Council on Environmental Technology in Chapter 387 of the Texas Health and Safety Code, and the Council charge is:

a. To identify and evaluate new technologies; to seek the approval of the United States Environmental Protection Agency for those technologies, and to facilitate the deployment of those technologies, and

b. to assist the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency in the process of ensuring credit for new, innovative and creative technological advancements.

1.2 DELIVERABLES, SCHEDULE, AND ANTICIPATED FUNDING LEVEL

Only one award of up to $50,000 is anticipated under this portion of the TCET's programs.

The successful applicant for the Technology Assessment will:

a. Meet with the Council and/or Council staff to refine a scope of work and to review a detailed outline of the assessment. These meetings will occur within 30 days of the date of the grant award.

b. Provide a draft report on air quality technology development needs and the current status of critical technologies. The report will be submitted within 150 days of the date of the grant award. The TCET will submit this draft report to a peer review panel and will forward panel comments to the successful applicant.

c. Provide a final report, which responds to comments from the review panel and the TCET. The final report will be submitted within 180 days of the date of the grant award.

1.3 ELIGIBLE APPLICANTS

Eligible* applicants include individuals, universities, corporations, organizations, governments or governmental subdivisions or agencies, business trusts, partnerships, associations, or any other legal entity.

*The Attorney General has ruled that universities or other organizations represented on the Texas Council on Environmental Technology are ineligible to receive grants from TCET. The university campuses excluded from receiving grants by having a member on the Council are UT Austin, The University of Houston, Texas A&M College Station, Texas A&M Kingsville, Rice University, Texas Tech University. The Dallas office of EPRI is also excluded. The Council will be particularly sensitive to issues of conflict of interest.

1.4 GENERAL REQUIREMENTS

a. All applications for funding must be completed according to the application instructions and submitted by the required deadline. The complete requirements and instructions are included in the application instruction forms.

b. Entities selected to receive grant funding will be required to execute a contract with the TCET. All services or work carried out under a contract awarded as a result of this RFP must be completed within the scope, timeframes, and funding limitations specified in the contract.

1.5 GRANT ADMINISTRATION AND REIMBURSEMENT OF EXPENSES

a. Payments will be made upon acceptable completion of project tasks and milestones by the grant recipient. Requests for payment may be submitted upon successful completion of project tasks/milestone as agreed to in the deliverables schedule.

b. Reports on the progress of completing the project activities will be required with each request for payment. Progress reports may also be required on a quarterly basis, even if no requests for payment are

submitted during that time period. Reporting forms will be provided by the TCET.

c. All project activities must be completed before the end of the grant contract term, and all requests for payment and reports will need to be submitted within 45 days after termination of the contract. Ten percent of the contract amount will be allocated to completion of the final project report and will not be released until an approved final project report is provided.

1.6 FUNDING

TCET anticipates granting one award of up to $50,000, and may select parts of a proposal for funding and may offer to fund less than the dollar amount requested in a proposal.

2.0 APPLICATION PROCESS

Application forms and criteria on the activities eligible for funding under this program may be viewed and downloaded from the TCET Web site at www.tcet.state.tx.us. The materials may also be obtained by calling 512/232-5225, or by sending an email to proposal@tcet.state.tx.us.

a. **Required Forms.** To apply for funding, applicants must complete and submit a grant application, which includes the required information described in the instructions included with the application forms.

b. **Application Submission.** Applications shall be submitted to TCET in the following format:

1. All forms must be typed with 1 inch margins, 10 pt. font minimum size, and in any of the following formats: word, word-perfect, or excel.

2. An electronic version (.pdf, word or word-perfect) must be sent via email to proposal@tcet.state.tx.us .

3. A signed unbound original and 5 paper copies shall also be submitted via Regular, Express Mail, FedEx, or UPS to:

Texas Council on Environmental Technology

Center for Energy and Environmental Resources

The University of Texas at Austin

10100 Burnet Road, Building 133, MC R7100

Austin, Texas 78758

512-232-5225

c. **Deadline for Submission.**

1. Electronic proposals must be emailed during normal work hours (8a.m. to 5p.m.) and no later than 12:00 noon Central Standard Time on Thursday June 27, 2002. The email submittal address is proposal@tcet.state.tx.us or you may go to the TCET web page and click the link to Request for Proposals, then click Email Proposals. Your normal email program will start, and you should attach the file(s) to upload with the email. After sending, please wait an hour and then call Vickie Amidon at (512) 232-7006 to confirm that the email & attached file(s) were received

2. Paper copies of the proposal must be received on the premises of the TCET as directed herein by no later than 5:00 p.m. CST June 28, 2002.

3. Late proposals will not be considered for funding.

4. The TCET will not accept applications via FAX machine.

d. **Additional Program Information.** Individuals desiring further information are encouraged to email proposal@tcet.state.tx.us.

e. **Status of Application.** Upon submission, all proposals become the property of the State of Texas and as such become subject to the Texas Open Records Act, V.T.C.S. art. 6252-17a.

3.0 SELECTION FACTORS AND WEIGHT ASSIGNED

a. Overall quality and completeness of the proposal, including clearly defined objectives and schedules. Up to 60 points (60 percent of total possible points).

b. Qualifications of applicants. Up to 30 points (30 percent of total possible points).

c. Cost effectiveness and matching funds or resources. Up to 10 points (10 percent of total possible points).

4.0 APPLICATION REVIEW AND SELECTION PROCESS

a. **Initial Review.** The TCET will review the applications for completeness and eligibility. If an application is found to be incomplete or ineligible for funding, the TCET will notify the applicant within 10 working days of receiving the application.

b. **Project Evaluation.** Properly completed applications for eligible projects will be evaluated and ranked by a committee identified by the TCET.

c. **Project Selection List.** Based on the recommendations of the evaluation committee, successful applicant(s) will be identified by the TCET.

d. **Grant Award and Contracting.** The awarding of a grant will be contingent upon the availability of funds in the TCET account. The applicant will be given a defined period of time to sign and return the grant contract.

TRD-200203223
David T. Allen, Ph.D.
Chair
Texas Council on Environmental Technology
Filed: May 24, 2002

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Credit Union Department

Application(s) to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received for Brazos County Federal Employees Credit Union, College Station, Texas. The proposed new name is FedStar Credit Union.

An application for a name change was received for Southeast Affiliated Federal Employees Credit Union, Beaumont, Texas. The proposed new name is SAFE 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-200203235

Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 24, 2002

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Texas Commission for the Deaf and Hard of Hearing

Notice of Request for Information

The Texas Commission for the Deaf and Hard of Hearing (TCDHH), hereby gives notice of a Request for Information (RFI). The primary purpose of the RFI is to obtain information regarding costs for the provision of interpreting services by certified court sign language interpreters within the state's court system.

By authority of the Human Resource Code, Chapter 80, TCDHH is designated to annually adopt by rule a schedule of fees for interpreter services which establishes a fair market price for the state.

Further by authority granted by the 2001 Legislature, in the Human Resource Code, Chapter 57, TCDHH shall provide instructions for the compensation of certified court interpreters and for the designation of the party or entity responsible for payment of such compensation. By the same authority, the courts in the state of Texas must now utilize TCDHH certified court interpreters for all court procedures where certified court sign language interpreters are requested or required. TCDHH is seeking to establish a reasonable fee for the compensation of certified court sign language interpreter services in the court systems for persons who are deaf or hard of hearing. To this end, TCDHH requests that potential service providers submit information concerning specific conditions and costs for the provision of certified court sign language interpreter services for the state's court system.

This RFI is for informational purposes only. For further information about this RFI contact Billy Collins or Randi Turner at (512) 407-3250 or (512) 407-3251/TTY. Responses must be received in the TCDHH office by 5:00 p.m., July 10, 2002, at 4800 N. Lamar, Suite 310, Austin, TX 78756.

TRD-200203258
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: May 24, 2002

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Texas Education Agency

Request for Applications Concerning the Ninth Grade Success Initiative, Cycle 3, 2002-2003 and 2003-2004

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-024 from school districts or shared services arrangements (SSA) of school districts and open-enrollment charter schools. The fiscal agent of a shared services arrangement must be a school district or an open enrollment charter school. Districts that received Ninth Grade Success Initiative Cycle 1, 1999-2000 and 2000-2001 grants, Cycle 1 continuation grants for 2001-2002 and 2002-2003, or Ninth Grade Success Initiative, Cycle 2, 2001-2002 and 2002-2003 grants, are not eligible to receive funding for Cycle 3. Districts that participated in SSA of school districts in Cycle 1, 1999-2000, but did not continue in the SSA for the Cycle 1 continuation year, 2000-2001, are considered eligible applicants.

Description. The objective of the Ninth Grade Success Initiative, Cycle 3, 2002-2003 and 2003-2004, is to fund programs (not to exceed 210 days of instruction) specifically designed for students in Grade 9 who are at risk of not earning sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the commissioner of education or who have not earned sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the commissioner.

The criteria by which grants are to be awarded include the quality of the proposed program design, the school district's demonstrated need for the program, and the projected number of identified eligible students to be served. The amount of the grant awarded must also take into account funds distributed to the school district under Texas Education Code, Chapter 42, Foundation School Program. Grant funds may be used to create new programs, enhance existing programs, or expand existing programs.

Dates of Project. The Ninth Grade Success Initiative, Cycle 3, will be implemented during the 2002-2003 and 2003-2004 school years. Applicants should plan for a starting date of no earlier than September 1, 2002, and an ending date of no later than August 31, 2004.

Project Amount. Funding will be provided for approximately 100 projects. Each project will receive funding for a two-year grant period in a range from $100,000 to $1,500,000. A school district may submit only one application but may include similar or different programs for multiple campuses within the district. Continued project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this 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 #701-02-024 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (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 announcement letter and complete 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 Geraldine Kidwell, Division of Curriculum and Professional Development, TEA, (512) 463-9581.

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, July 30, 2002, to be considered for funding.

TRD-200203331

Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: May 29, 2002

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Request for Applications Concerning the Texas After-School Initiative for Middle Schools, Cycle 3, 2002-2003 and 2003-2004

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-025 from eligible school districts, open-enrollment charter schools, or shared services arrangements of school districts or open-enrollment charter schools to implement quality after-school programs for students of middle-school age that include the three required components that follow and the additional specifications identified in House Bill 1, General Appropriations Act, Rider 61, 77th Texas Legislature, 2001. Education Service Centers are not eligible for this grant. Each eligible district or open-enrollment charter school may submit only one application. Only those districts or open-enrollment charter schools meeting the conditions in the description are eligible to submit applications. Campuses receiving continuation grants for the Texas After-School Initiative (TASI) for Middle Schools, Cycle 1, or the TASI for Middle School, Cycle 2, are not eligible for Cycle 3 funding. The Texas Education Agency will ensure, through a competitive priority, that not less than $1 million of the funding available for the (TASI) for Middle Schools, Cycle 3, 2002-2003 and 2003-2004, will go to districts that submit proposals focusing the academic-based requirement of the TASI programs on mathematics. The proposals should contain objectives, strategies, activities, and collaborations that are relevant to the Texas Mathematics Initiative. Additional information about the statewide mathematics initiative may be found on the TEA website at http://www.tea.state.tx.us/math/index.html.

Description. The TASI for Middle Schools, Cycle 3, is to be implemented for students of middle-school age (10 years old through 14 years old) who attend schools in high risk/high crime zip codes as identified by the juvenile referrals gathered by the Texas Criminal Justice Policy Council. The students must attend schools (i.e. campuses) with physical addresses in the designated zip codes or reside in the designated zip codes. The program is to primarily serve students at risk of academic failure and/or at risk of committing juvenile offenses. Applicants shall develop proposals that directly address the needs of students incorporating the three required components: (1) an academics-based curriculum linked to the Texas Essential Knowledge and Skills; (2) a character/citizenship education component; and (3) a plan for parental and/or mentor involvement.

The goals of the TASI for Middle Schools, Cycle 3, are to increase academic achievement for participating students, to decrease the referrals to the juvenile justice system for participating students, and to involve parents and/or mentors in the education of the students.

Dates of Project. The TASI for Middle Schools, Cycle 3, will be implemented during the 2002-2003 and 2003-2004 school years. Applicants should plan for a starting date of no earlier than September 1, 2002, and an ending date of no later than August 31, 2004.

Project Amount. Funding will be provided for approximately 25 projects. Each project will receive funding in the range of $150,000 to $800,000. The size of the grant will be based on the number of campuses and the number of students served. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education, the Commissioner of Education, and the state legislature.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this 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 #701-02-025 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (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 announcement letter and complete 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 Geraldine Kidwell, Division of Curriculum and Professional Development, TEA, (512) 463-9581.

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, July 30, 2002, to be considered for funding.

TRD-200203330
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: May 29, 2002

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Finance Commission of Texas

Notice of Award of Major Consulting Service Agreement

Pursuant to Government Code, §2254.030, the Finance Commission of Texas (commission) files this notice of a contract award to Analytica, Inc., (consultant), 2512 South Boulevard, Houston, Texas 77098. Notice of a request for proposals to perform a comprehensive research, study, and analysis of agricultural business lending in Texas was published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2302).

The consultant will conduct a study on the availability, quality, and prices of agricultural business lending in Texas. The study constitutes the fifth in a continuing series of annual studies mandated by Finance Code, §11.305, relating to (1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state, and (2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

The total value of the contract, denominated as Contract No. 451-2-353, is $96,500. The contract begins on May 15, 2002, and ends on the earlier of the date the completed study is delivered to and accepted by the commission, or November 30, 2002.

The consultant is required to present to the commission (1) a draft written report of the results of the study on or before October 1, 2002, (2) a written analysis of and response to comments received from interested parties on or before November 15, 2002, and (3) the final report on or before November 30, 2002.

TRD-200203236
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: May 24, 2002

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General Land Office

Pre-Bid Solicitation Conference on Sale of Fort Bend County Land

The General Land Office will be conducting a Pre-Bid Solicitation Conference at 9 a.m. on **June 12, 2002,** for the purpose of presenting, and obtaining responses to, a proposed bid package [available for download, with location map, from **www.glo.state.tx.us/land**] for the sale of approximately 1955 acres of Permanent School Fund property in Fort Bend County, Texas, commonly referred to as Tracts 4 & 5. It is intended that comments received at the conference and thereafter will be considered in formulating the final bid solicitation package. This conference will be held at the following address: Doubletree Hotel - Greenway Plaza; 2828 Southwest Freeway, Houston, Texas.

Following School Land Board approval, a final bid package should be available for download from www.glo.state.tx.us/land by mid to late August. The Bid Award is tentatively planned for December 2002. The minimum bid will be **$32,900,000**. If you would like to have more information about this sale, or would like to be added to the mailing list, please email scott.youmans@glo.state.tx.us or call 1-800-998-4GLO (1-800-998-4456).

If you plan to attend the conference, please call or email Scott Youmans with your name, address, and number of guests.

If you are unable to attend the conference, or if you do attend and want to submit written comments, you can e-mail your written comments, not later than July 12, 2002, to Scott Youmans, at the above e-mail address, or mail them to Scott Youmans, Asset Management Division, General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701.

NOTE: NEITHER THE PRE-BID SOLICITATION CONFERENCE NOR THE PROPOSED BID PACKAGE ARE INTENDED TO BE, NOR SHOULD THEY BE CONSIDERED TO BE, A PART OF THE BID SOLICITATION FOR THE PROPERTY.

TRD-200203339
Larry Soward
Chief Clerk
General Land Office
Filed: May 29, 2002

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Office of the Governor

Request for Additional Grant Applications for Juvenile Justice and Delinquency Prevention Act (JJDP), Part E Challenge Programs

The Criminal Justice Division of the Governor's Office is soliciting applications for projects to develop programs to address the need for increasing aftercare services for juveniles involved in the justice system and developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to social services under the federal fiscal year 2001 for JJDP-Challenge Program.

Purpose: The purpose of the program is to provide funds to develop programs to address the need for increasing aftercare services for juveniles involved in the justice system and developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to social services; thereby, addressing the following Challenge Activities: (1) Activity I - Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles. (2) Activity E - Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self-defense, instruction, education in parenting, education in general, and other training and vocational services. Projects must use an interdisciplinary approach to review research on the need for aftercare for juvenile offenders and gender-specific programming.

Available Funding: Available funding is authorized under the Juvenile Justice and Delinquency Prevention and Grant Funds made available to states to address at least one of the ten Challenge Activities specified in the Act. Approximately $340,000 will be made available for local or statewide projects. CJD will use 60% of the available funds for Activity I and 40% of available funds for Activity E as noted above. Applicants may select to address at least one activity or combine both activities while giving emphasis on Activity I.

Standards: Grantees must comply with the applicable grant management standards adopted under the Texas Administrative Code Section 3.19, which are hereby adopted by reference unless otherwise noted.

Prohibitions: None.

Eligible Applicants: State agencies, nonprofit organizations, local units of government, faith-based organizations, crime-control prevention districts, Native American tribal governments, councils of governments, universities, independent school districts, and juvenile boards.

Project Period: Projects to begin no later than September 1, 2002.

Application Process: Eligible applicants can access the Youth-Related, Juvenile Justice, and Criminal Justice Projects application kit for State Fiscal Year 2003 through the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to those applicants that can demonstrate need utilizing verifiable data; establishing an overall goal; implementation of research based or promising approaches/activities; establish obtainable outcome measures with an evaluation plan; and can demonstrate a collaborative effort addressing the challenge activities. Priority will be given to those applicants that encompass both activities while giving greater emphasis to Activity I.

Closing Date for Receipt of Applications: All original applications, plus an additional copy, must be submitted directly to the Governor's Criminal Justice Division postmarked on or before July 31, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness CJD and by a peer review group selected

by the Executive Director. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Louri O'Leary at (512) 463-1919.

TRD-200203206
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: May 23, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of J.C. PENNEY LIFE INSURANCE COMPANY to STONEBRIDGE LIFE INSURANCE COMPANY, a foreign Life, Accident and/or Health Company. The home office is in Rutland, Vermont.

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-200203327
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 29, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual filing submitted by State Farm Mutual Automobile Insurance Company and State Farm fire & Casualty Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101, §3(l). The filing proposes a revision to its Multiple Line Discount Rule. The rule is being amended to clarify on which auto policies the discount is available. The companies state its intent has always been, and continues to be, to make the discount available for autos on which personal auto coverage is provided. When the rule was originally implemented effective April 19, 1998 (TDI File #s 9212375034 and -5035), this intent was embodied in the following rule language:

"The automobile coverage must be provided on a Personal Automobile Policy, except in cases where the Business Auto Coverage Form is used because, the private passenger autos are owned by resident relatives other than husband and wife. (Rule 74.A)"

In its June 1, 1999 amendment of the rule (TDI File #s 9212395348 and -5351), the companies changed the language to the following:

"The automobile coverage must be provided on a Personal Automobile Policy."

This editorial change was made because the companies believed that the 1998 revision to the Personal Auto Policy Eligibility Rules (Commissioner's Bulletin B-0083-98) rendered the language related to the Business Auto Policy unnecessary.

It appears this is not the case. The companies still have a few situations in which personal auto risks are written on a Business Auto Policy with an Individual Named Insured endorsement. Its intent was for these type risks to be entitled to the Multiple Line Discount, and the discount has been applied to these policies when the person otherwise qualifies for the discount.

The companies have proposed to change that particular qualification to the following more generalized language:

"The automobile must be afforded personal auto coverage."

In order to make this change, it is Auto Staff's opinion that the companies need to withdraw the June 1, 1999 amendment (TDI File #s: 9212395348 and -5351), effective upon approval of this submission, and replace it with this amendment.

The companies will continue providing the 10% discount as was filed and approved in 1999. The exhibits in the February 12, 1999 filing provide the actuarial support for the discount.

The Property and Casualty Actuarial Staff have determined the companies' actuarial documents continue to support this 10% discount level.

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 Senior Associate Commissioner for Property & Casualty, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 by July 7, 2002.

TRD-200203265
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 28, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by National American Insurance Company 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 for all classes and territories flex percentages +50 for Liability and +30 for Physical Damage under truckers coverage form and +21 for Liability and +25 for Physical Damage under all other coverage forms. The overall rate change is +0.67%.

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 June 27, 2002.

TRD-200203325
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 29, 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 United Life Agency Services, LLC, (using the assumed name of Paylogix), a foreign third party administrator. The home office is Garden City, New York.

Application for admission to Texas of Synergence Group, Inc., a foreign third party administrator. The home office is Chicago, 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-200203326
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 29, 2002

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Manufactured Housing Division

Notice of Administrative Hearing (MHD2002000835-DT)

Thursday, June 20, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Texas Manufactured Homes, Inc. to hear alleged violations of Sections 7(b), 8(b), 8(d), 13(e), 14(m), 18(b), and 20(a) of the Act, Sections 80.121(a), 80.123(b), and 80.180(b)(1) of the Rules, and Sections 17.46(b)(1), (5), (12), (14), and (23) of the Business and Commerce Code regarding the selling of a manufactured home from an unlicensed or bonded location, selling a used manufactured home without giving a written warranty that the manufactured home was habitable, selling a used manufactured home without the appropriate, timely transfer of a good and marketable title, selling a used manufactured home without giving the home owner a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of the Department, not delivering the Formaldehyde Health Notice, not retaining and maintaining all verifications and copies of notices in the retailer's sales files for a period of not less than six years from the date of sale, and misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction. SOAH 332-02-2989 Department MHD2002000835-DT.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200203314
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: May 29, 2002

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission submitted an In Addition item entitled "Request for Comments on the 2002 Integrated Water Quality Monitoring and Assessment Report formally the Clean Water Act (CWA) §305(b) Water Quality Inventory and §303(d) List of Impaired Water Bodies" for the May 24, 2002, issue of the *Texas Register.* The notice as submitted contained two errors.

On page 4632, third paragraph, the wording should be corrected to read, "Beginning June 13, and continuing through July 15, 2002...."

Also, on page 4633, second full paragraph, eighth line, the sentence should be corrected to read, "Comments must be received by 5:00 p.m. on July 15, 2002."

TRD-200203376

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Extension of Deadline for Written Comments (Chapter 101)

In the April 26, 2002 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published proposed amendments to 30 TAC Chapter 101, General Air Quality Rules (27 TexReg 3475) concerning upset maintenance and emissions events. The preamble to the proposed rules stated that comments must be received by 5:00 p.m., May 28, 2002. The commission has extended the deadline for receipt of written comments to 5:00 p.m., June 10, 2002 for these proposed amendments and the associated state implementation plan (SIP) revisions.

Comments may be mailed 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 2001-075-101-AI. Comments must be received by 5:00 p.m., June 10, 2002. For further information, please contact Alan Henderson, Policy and Regulations Division, (512) 239-1510. Copies of the proposed amendments can be obtained from the commission's web site at http://home.tnrcc.state.tx.us/oprd/rules/propadop.html.

TRD-200203315
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 29, 2002

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Notice of Deletion of the Higgins Wood Preserving Site from the State Superfund Registry

The executive director (ED) of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing this notice of deletion of the Higgins Wood Preserving site (the site) from the state registry, the list of proposed state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state registry on September 25, 1990. The site, including all land, structures, appurtenances, and other improvements is approximately 31 acres, located in the 400 block of North Timberline Drive (U.S. Hwy. 59) in Lufkin,

Angelina County, Texas. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Historical records indicate that the present location of the site was developed as a lumber mill by the Lufkin Land & Lumber Company as early as 1906. The property was occupied by various commercial wood creosoting ventures from 1937 to 1973. The creosoting facility was reportedly demolished in 1974, and the property was subsequently purchased for development as a commercial retail center. Towne Square Shopping Center was constructed in 1976, and the commercial retail facility has been in continuous operation on the western portion of the site, with various expansions completed during the period between 1977 and 1986. The eastern, undeveloped portion of the property has been inactive since 1974. Residual creosote constituents consisting of volatile and semi-volatile compounds along with non-aqueous phase liquid (NAPL) have been found at the site.

The site is not appropriate for residential use according to the Risk Reduction Rules, 30 TAC Chapter 335, Subchapter S.

In accordance with 30 TAC §335.344(b), the commission held a public meeting to receive comments on the proposed deletion of the site on April 25, 2002, at the TNRCC Park 35 Complex, Building D, Room 264, 12100 Park 35 Circle in Austin. Favorable comments regarding the proposed deletion were received at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Because the site has been accepted into the TNRCC Voluntary Cleanup Program, it may now be delisted from the state registry as provided by Texas Health and Safety Code §361.189(a) and 30 TAC §335.344(c)(5).

All inquiries regarding the deletion of the site should be directed to Mr. Bruce McAnally, TNRCC Community Relations, telephone numbers (800) 633-9363 or (512) 239-2141.

TRD-200203272
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 28, 2002

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Notice of District Petition

Notices mailed during the period May 20, through May 28, 2002.

TNRCC Internal Control No. 03272001-D02 PETITION. Jonah Water Special Utility District of Williamson County (The District) has filed an application with the Texas Natural Resource Conservation Commission (TNRCC) for authority to levy impact fees of $3,000 per equivalent single family connection for new connections to the water service within or near the service area of Jonah Water Special Utility District. The District's boundaries are shown on the map which is attached to this notice and marked as Exhibit "A". The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The purpose of impact fees is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system which identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TNRCC Park 35 Office Complex located between Yager & Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvement plan, is available for inspection and copying at the Jonah Water Special Utility District's office during regular business hours. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days after the 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 the newspaper publication of this notice.

The TNRCC may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200203269
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 28, 2002

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Notice of Intent to Delete The Avinger Development Company (ADCO) Site from the State Superfund Registry

The executive director (ED) of the Texas Natural Resource Conservation Commission (commission) is issuing a notice of intent to delete the Avinger Development Company (the site) site from the state registry, the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the Voluntary Cleanup Program

and is therefore, eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

The site was originally proposed for listing in the December 17, 1999 issue of the *Texas Register* (27 TexReg 11590). The site, including all land, structures, appurtenances, and other improvements, is approximately 26.49 acres located within the city limits of Avinger in Cass County, on the south side of State Highway 155, approximately one quarter mile east of the intersection with State Highway 49. The site also includes any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The site is a former copper, chromium, arsenate (CCA) wood treatment facility and consisted of two metals buildings and an abandoned CCA discharge pit.

In accordance with §335.344(b), the commission will hold a public meeting to receive comments on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held on July 9, 2002, at 2:00 p.m. at the Austin headquarters of the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, (south of Yager Lane on the southbound IH-35 access road) Building D, Room 200-33. All persons desiring to make comments regarding the proposed deletion of the site may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 2:00 p.m. July 9, 2002, and should be sent in writing to Mr. Robert Wucher, Project Manager, Remediation Division, Superfund Cleanup Section, Texas Natural Resource Conservation Commission, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on July 9, 2002.

A portion of the record for the site including documents pertinent to the ED's proposed deletion is available for review during regular business hours at the Daingerfield Public Library, 207 Jefferson Street, Daingerfield, Texas, telephone number (903) 645-2823. The complete public file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about the public meeting, please call Joe Shields at (800) 633-9363.

TRD-200203273
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 28, 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 **July 8, 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 July 8, 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: Charles Jackson, Jr.; DOCKET NUMBER: 2001-0385-WOC-E; TNRCC ID NUMBER: 451873805; LOCATION: 4701 Anderson Road #68, Houston, Harris County, Texas; TYPE OF FACILITY: on-site sewage operator certificate; RULES VIOLATED: 30 TAC §325.11(a)(3), by falsifying information on his application for a Class C Wastewater Operator Certificate; PENALTY: revocation; STAFF ATTORNEY: Rich O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Jackie Fountain dba Fountain Plumbing; DOCKET NUMBER: 2001-0282-OSI- E; TNRCC ID NUMBER: none; LOCATION: approximately two miles east of Timpson on Highway 87, Timpson, Shelby County, Texas; TYPE OF FACILITY: on-site sewage (OSSF); RULES VIOLATED: 30 TAC §285.50(b), and Texas Health and Safety Code (THSC), §366.071, by failing to register as an installer with the TNRCC before installing an OSSF; THSC, §366.054, by failing to notify the TNRCC regional office of the date on which he planned to begin work on the OSSF; THSC, §366.051(c), by failing to obtain proof of permit prior to construction; 30 TAC §§285.31(b)(1)(a), 285.32(a)(1), 285.33(b)(1)(B) and (E), 285.61(6), and THSC, §366.004, by failing to use proper materials in the installation; PENALTY: $1,750; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Lyondell-Citgo Refining, LP; DOCKET NUMBER: 2001-0072-AIR-E; TNRCC ID NUMBER: HG-0048-L; LOCATION: 12000 Lawndale Street, Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(1), and §111.111(a)(2)(c), 40 Code of Federal Regulations (CFR), §60.105(a)(1), and THSC, §382.085(b), by failing to install a continuous opacity monitoring system in the fluid catalytic cracking unit regeneration stack to continuously monitor and record opacity of emissions; 30 TAC §101.20(2), 40 CFR, §60.13(d)(1), and THSC, §382.085(b), by failing to use the appropriate low span daily calibration gas for the continuous emission monitoring system that measures hydrogen sulfide in the fuel gas and by failing to use a 234 part per million (ppm) hydrogen sulfide high span standard gas during the cylinder gas audit instead of the required 150 to 180 ppm hydrogen sulfide gas; THSC, §382.085(a) and (b), by allowing

unauthorized emissions from the 736 Coker Unit fire at the "B" drum; 30 TAC §116.115(c), THSC, §382.085(b), and TNRCC Air Permit Number 2167, Special Condition 15, by failing to properly calibrate the Predictive Emissions Monitoring System to determine in-stack emissions of oxides of nitrogen and oxygen; PENALTY: $12,700; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200203311
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 28, 2002

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Notice of Water Rights Application

Notices mailed during the period May 28, 2002 through May 31, 2002.

APPLICATION 8226 Hilltop Holdings, Inc., 6978 I.H. 35, New Braunfels, Texas 78130, seeks a Temporary Water Use Permit pursuant to 11.138, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Pursuant to 30 TAC 295.153, this notice should be mailed to the downstream water right holders of record in the Guadalupe River Basin. Applicant seeks authorization to divert and use 99 acre-feet of water within a period of three years from unnamed tributary of Water Hole Creek, a tributary of York Creek, a tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin for storage in an off-channel reservoir for recreational purposes. The water will also be used for the initial fill of the reservoir and to compensate for evaporative losses. The reservoir is located 5.8 miles northeast of New Braunfels, Texas, bearing N64.4 degrees W, 1099.2 feet from the northeast corner of a three lot subdivision no. 23 of the A.M. Esnaurizar Eleven League Grant, Comal County, also being 29.8 degrees N Latitude and 98.1 degrees W Longitude, and will impound a maximum of 39.1 acre-feet of water with a total surface area of 8.1 acres. The application was received on April 18, 2002. Additional fees were received on May 3, 2002. The application was declared administratively complete on May 3, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below by June 4, 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 June 4, 2002. The Executive Director may approve the application unless a written request for a contested case hearing is filed by June 4, 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-200203270
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 28, 2002

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Public Utility Commission of Texas

Public Notice of Amendment to Interconnection Agreement

On May 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Rosebud Telephone, LLC collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25926. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25926. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25926.

TRD-200203200
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2002

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Public Notice of Amendment to Interconnection Agreement

On May 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Westel, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25927. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25927. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25927.

TRD-200203201
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2002

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Public Notice of Amendment to Interconnection Agreement

On May 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Nextel of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25928. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25928. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25928.

TRD-200203202
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2002

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Public Notice of Amendment to Interconnection Agreement

On May 22, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and MCI WorldCom Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25943. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25943. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 24, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25943.

TRD-200203257
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

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Public Notice of Amendment to Interconnection Agreement

On May 23, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Excel Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25952. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25952. As a part of the comments, an interested person may request

that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 25, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25952.

TRD-200203268
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. Central Telephone Company of Texas Application for Approval of LRIC Study for Billed Number Screening Pursuant to P.U.C. Substantive Rule §26.214 on June 3, 2002, Docket Number 25938.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25938. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203237
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. United Telephone Company of Texas, Inc. Application for Approval of LRIC Study for Billed Number Screening Pursuant to P.U.C. Substantive Rule §26.214 on June 3, 2002, Docket Number 25939.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25939. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203238
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. Texas Alltel, Inc. Application for Approval of LRIC Study for New Drop Relocation Service Pursuant to P.U.C. Substantive Rule §26.214 on June 3, 2002, Docket Number 25940.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25940. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203239
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214

Docket Title and Number. Sugar Land Telephone Company Application for Approval of LRIC Study for New Drop Relocation Service Pursuant to P.U.C. Substantive Rule §26.214 on June 3, 2002, Docket Number 25941.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25941. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203240
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

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Public Notice of Interconnection Agreement

On May 20, 2002, Santa Rosa Telephone Cooperative, Inc. and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25923. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25923. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25923.

TRD-200203198
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2002

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 20, 2002, AT&T Wireless Services, Inc. and Nortex Communications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25924. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25924. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25924.

TRD-200203199
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2002

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Public Notice of Interconnection Agreement

On May 20, 2002, Southwestern Bell Telephone Company and Kentucky Universal Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25925. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25925. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25925.

TRD-200203255
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

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Public Notice of Interconnection Agreement

On May 21, 2002, WinStar Communications, LLC and Verizon Southwest, collectively referred to as applicants, filed a joint application for adoption of an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25933. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25933. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 21, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25933.

TRD-200203256
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2002

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Request for Comments Regarding Rulemaking to Address the Redefinition of "Access Line"

Texas Local Government Code §283.003 requires the Public Utility Commission (commission) to "determine whether changes in technology, facilities, or competitive or market conditions justify a modification in the commission-established categories of access lines, or if necessary, the adoption of a definition of 'access line'". Project Number 25450, *Rulemaking to Address the Redefinition of Access Lines and Other Related Outstanding Access Line Implementation Issues*, has been established to conduct this review. P.U.C. Substantive Rule §26.461 provides that the definition of "access line" is as defined in Texas Local Government Code §283.002(1). The three commission-established categories of access lines are provided under §26.461.

To allow stakeholders an opportunity to discuss the exact threshold question, the commission solicited written comments and conducted an April 9, 2002 workshop. To further assist in its determination, the commission requests interested persons to file written comments to the following questions by June 21, 2002. At this time, the commission does not intend to hold another workshop regarding these questions.

1. With regard to each of the following issues, explain how changes in technology justify a modification to the definition of "access line" or justify a modification to the three categories of access lines:

A. Voice over Internet Protocol;

B. Technological advancement from lower capacity to higher capacity access lines;

C. Technological advancement of packet switch and circuit switch use;

D. Technological advancement in use of channelized and nonchannelized high capacity lines; and

E. Other changes in technology.

2. With regard to each of the following issues, explain how changes in facilities justify a modification to the definition of "access line" or justify a modification to the three categories of access lines:

A. Use of Voice over Internet;

B. Transitions from lower capacity to higher capacity access lines;

C. Use of packet switch and circuit switch;

D. Use of channelized and nonchannelized high capacity lines; and

E. Other changes in facilities.

3. With regard to each of the following issues, explain how changes in competitive or market conditions justify a modification to the definition of "access line" or justify a modification to the three categories of access lines:

A. Voice over Internet Protocol;

B. Transitions from lower capacity to higher capacity access lines;

C. Use of packet switch and circuit switch;

D. Use of channelized and nonchannelized high capacity lines; and

E. Other changes in competitive or market conditions.

4. How prevalent is the transition to Voice Over Internet Protocol? Please quantify as accurately as possible. Please describe the calculation or estimation methodology for deriving your response.

5. What is the potential loss in municipal revenues over the next three years due to transitions from lower capacity to higher capacity access lines? Please describe the calculation or estimation methodology for deriving your response.

6. Please describe, in terms of routing and switching, any switched lines that allow the delivery of local exchange service but are not circuit switched. How frequently are such lines deployed?

7. Should the definition of "transmission path" in P.U.C. Substantive Rule §26.465(c)(2) include lines switched by other means than circuit switches (*i.e.*, packet switches)? Why or why not? If so, please submit suggested rule amendment language.

8. Should the commission differentiate between channelized and nonchannelized high capacity lines? Why or why not? If so, please submit suggested rule amendment language.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Responses to those questions requiring factual information or quantitative analysis, such as numbers 4 and 5, shall be made under signed affidavit. The affiant shall state, "I swear, affirm and certify that I am the responsible official of (*responding entity*), with authority to make these comments. I have examined the information in the comments and, to the best of my knowledge, information, and belief, all statements of fact contained in the comments are true and correct." Along with the signature, the affiant shall provide his or her business title. In the alternative, comments in their entirety may be provided under the same signed affidavit. Electronic copies should also be submitted to Garnet Elkins at

garnet.elkins@puc.state.tx.us. All responses should reference Project Number 25450.

Questions concerning this solicitation of comments should be referred to Hayden Childs, Senior Policy Analyst, Telecommunications Division, (512) 936-7390, hayden.childs@puc.state.tx.us, or Michelle Lingo, Senior Attorney, Policy Development Division, (512) 936-7217, michelle.lingo@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200203267
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 28, 2002

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Texas A&M University, Board of Regents

Public Notice (President of Texas A&M University-Kingsville)

Pursuant to Section 552.123, Texas Government Code, the following candidate is the finalist for the position of President of Texas A&M University-Kingsville and upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System:

Rumaldo Zapata Juarez (Dean and Professor, College of Health Professions, Southwest Texas State University

TRD-200203254
Vickie Burt Spillers
Executive Secretary to the Board of Regents
Texas A&M University, Board of Regents
Filed: May 24, 2002

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts pub lic hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200203173
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 23, 2002

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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:

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22. Examining Boards
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34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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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

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