

# TEXAS REGISTER

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**This month's front cover artwork:**

*Artist: Jessica Phillips  
10<sup>th</sup> 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.

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# Open Meetings

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

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

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

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

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. <http://www.texas.gov/>



**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 (1-800-735-2989).

# THE GOVERNOR

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As required by Texas Civil Statutes, Article 6252-13a, §6, 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.

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Executive Order  
Executive Order RP No. 1  
The State of Texas  
Executive Department  
Office of the Governor  
Austin, Texas

**Relating to Emergency Management**

**WHEREAS**, the Legislature of the State of Texas has heretofore enacted the Texas Disaster Act (the Act) of 1975, Chapter 418 of the Texas Government Code to:

- (1) Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary actions;
- (2) Prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
- (3) Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;
- (4) Clarify and strengthen the roles of the Governor, state agencies, and local governments in the mitigation of, preparation for, response to, and recovery from disasters;
- (5) Authorize and provide for cooperation and coordination of activities relating to mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (6) Provide a comprehensive emergency management system for Texas that is a coordinated effort to make the best possible use of existing organizations and resources within government and industry, and which includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;
- (7) Assist in the mitigation of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- (8) Provide the authority and mechanism to respond to an energy emergency; and

**WHEREAS**, under Section 418.013 of the Act, the Governor is expressly authorized to establish by executive order an Emergency Management Council comprised of the heads of state agencies, boards, and

commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to mitigation, preparedness, response, and recovery; and,

**WHEREAS, FURTHER** under Section 418.041 of the Act, a Division of Emergency Management is established in the Office of the Governor and the Director of the Division of Emergency Management is to be appointed by and serve at the pleasure of the Governor; and,

**WHEREAS**, with the aid and assistance of the Emergency Management Council and Division of Emergency Management, the Governor may recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

**NOW, THEREFORE, I**, Rick Perry, Governor of Texas, under the authority vested in me, do hereby create and establish the Emergency Management Council (the Council), to be comprised of the heads of the following state agencies, boards, commissions, and organized volunteer groups:

Adjutant General's Department  
Texas Department of Housing and Community Affairs  
American Red Cross  
Texas Department of Human Services  
Department of Information Resources  
Texas Department of Insurance  
General Land Office  
Texas Department of Mental Health and Mental Retardation  
General Services Commission  
Texas Department of Public Safety  
Governor's Division of Emergency Management  
Texas Department of Transportation  
Public Utility Commission of Texas  
Texas Education Agency  
Railroad Commission of Texas  
Texas Workforce Commission  
State Aircraft Pooling Board  
Texas Engineering Extension Service  
State Auditor's Office  
Texas Forest Service



State Comptroller of Public Accounts  
Texas Natural Resource Conservation Commission  
Texas Attorney General's Office  
Texas Parks and Wildlife Department  
Texas Commission on Fire Protection  
Texas Rehabilitation Commission  
Texas Department of Agriculture  
The Salvation Army  
Texas Department of Economic Development  
Texas Animal Health Commission  
Texas Department of Criminal Justice  
Texas Department of Health

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a staff member representative to the Council.

**I FURTHER** hereby designate the Director of the Texas Department of Public Safety to serve as Chair of the Council and as Director of the Division of Emergency Management (the Director). The Division of Emergency Management shall be designated as the agency to exercise the powers granted to me under the Act in the administration and supervision of the Act, including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of emergency services or disaster recovery, and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein. The Director shall establish emergency operation areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall establish in each a Disaster District Committee comprised of representatives of the state agencies, boards, commissions, and organized volunteer groups having membership on the Council. The Highway Patrol Commanding Officer of each Highway Patrol District or Sub-District shall serve as Chair of the Disaster District Committee and report to the Director on matters relating to disasters and emergencies. The Disaster District Committee Chair shall be assisted by the Council representatives assigned to that district, who shall provide guidance, counsel, and administrative support as required.

**FURTHER**, the Council is hereby authorized to issue such directives as may be necessary to effectuate the purpose of the Act, and is further

authorized and empowered to exercise the specific powers enumerated in the Act.

**FURTHER, IN ORDER** to carry out certain state emergency planning, community right-to-know, and response functions relating to hazardous materials, a standing element of the Council, designated the State Emergency Response Commission, will be comprised of representatives named by the heads of the agencies and commissions marked with an asterisk (\*) in the listing of the Council above. The State Coordinator, as appointed by the Director under Section 418.041 of the Act, shall chair the State Emergency Response Commission or designate a chair.

**FURTHER**, in accordance with Sections 418.102, 418.103, and 418.105 of the Act, and published rules of the Division of Emergency Management, I hereby designate the mayor of each municipal corporation and the county judge of each county in the state as the Emergency Management Director for each such political subdivision. These mayors and county judges shall serve as the Governor's designated agents in the administration and supervision of the Act, and may exercise the powers, on an appropriate local scale, granted the Governor therein. Each mayor and county judge may designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

By the authority vested in me under Section 418.104, of the Act, I further hereby authorize each political subdivision of the state to establish in the county in which they are sited, inter-jurisdictional agencies by intergovernmental agreement, supported as needed by local city ordinance or commissioner's court order, in cooperation and coordination with the Division of Emergency Management of the Governor's Office. In compliance with Section 418.101 of the Act, the presiding officer of each political subdivision shall promptly notify the Division of Emergency Management of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This executive order supersedes Executive Order GWB 95-1b, and shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 29th day of March, 2001.

Rick Perry, Governor

TRD-200102380



# 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.

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## Opinions

### **Opinion No. JC-0364**

The Honorable C.E. "Mike" Thomas, III Howard County Attorney, P.O. Box 2096, Big Spring, Texas, 79721

Re: Whether a county with a regional mental-health hospital may charge a "document preparation fee" of the county that is responsible for the costs of a hospital patient's mental-health proceeding, and related question (RQ-0306-JC)

#### **S U M M A R Y**

Howard County, as home to Big Spring State Hospital, may not charge a county that is responsible to pay the costs associated with a patient at the hospital a separate fee for document preparation. Rather, costs that the prosecutor's office incurs preparing documents for various proceedings are included within the "prosecutor's fees" that may be charged under section 571.018(c) of the Health and Safety Code. See Tex. Health & Safety Code Ann. § 571.018(c) (Vernon Supp. 2001). The prosecutor's fees may not exceed \$50. See id. §574.031(k).

Howard County may not refuse to conduct a probable-cause hearing under section 574.025 of the Health and Safety Code if an application for court-ordered mental-health services is pending in the appropriate Howard County court. See id. § 574.025. But, with respect to a patient receiving temporary inpatient mental-health services in Howard County under order by another county's court, Howard County Courts have no jurisdiction to conduct a ninety-day hearing under section 574.034 or a hearing on a motion for extended care under section 574.035 unless the appropriate Howard County court has arranged to hold the hearing. See id. §§ 574.034, .035. With respect to a hearing on a physician's application to administer psychoactive medication to a patient transferred to Big Spring State Hospital from another county, Howard County may not refuse to conduct the hearing if the application was transferred to a Howard County court. See id. § 574.104. The Howard County Attorney represents the State in a mental-health proceeding before a Howard County court.

### **Opinion No. JC-0365**

The Honorable Phil Garrett, Palo Pinto County Attorney, P.O. Box 190, Palo Pinto, Texas, 76484

Re: Disposition of state funds received by a county from a county attorney's partial waiver of annual compensation (RQ-0310-JC)

#### **S U M M A R Y**

State funds resulting from a county prosecutor's partial waiver of annual compensation under Government Code chapter 46 are received by the county and not the county prosecutor. These funds are subject to the county budget process and are to be allocated by the commissioners court to the expenses of the county prosecutor's office. The commissioners court may not reduce the county funds provided for the prosecutor's office as a result of the state funds provided under chapter 46.

### **Opinion No. JC-0366**

The Honorable Susan D. Reed, Bexar County Criminal District Attorney, Bexar County Justice Center, 300 Dolorosa, Fifth Floor, San Antonio, Texas, 78205-3030

Re: Whether a county bail bond board may consider an independent appraisal of real property executed in trust from bondsmen for the purpose of determining their limit for executing bonds (RQ-0317-JC)

#### **S U M M A R Y**

Absent statutory authority, a county bail bond board may not require an applicant for licensing to submit an independent appraisal of real property to be executed in trust to the board as security for writing bail bonds. The applicant for a license may voluntarily submit to a county bail bond board an independent appraisal or other evidence of the value of his or her property, and the board may consider the independent appraisal or other evidence in determining the value of the applicant's real property.

### **Opinion No. JC-0367**

The Honorable Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas 79901

Re: Whether a county may charge an applicant for a plat revision the costs of issuing notice of the proposed revision (RQ-0309-JC)

#### **S U M M A R Y**

Because it has no express constitutional or statutory authority to do so, a county may not charge an applicant for a plat revision for the costs of

issuing notice of the proposed revision under Local Government Code section 232.041(b).

**Opinion No. JC-0368**

The Honorable David Swinford, Chair, Agriculture and Livestock Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910

Re: Whether a municipality may provide labor and equipment to construct utilities on public easements and rights-of-way to serve a private subdivision (RQ-0313-JC)

**S U M M A R Y**

A municipality may use municipal labor and equipment to extend utility lines on public easements and rights-of-way to serve a residential subdivision. See Tex. Loc. Gov't Code Ann. §§ 402.001, .002 (Vernon 1999 & Supp. 2001).

**Opinion No. JC-0369**

The Honorable Bruce Isaacks, Denton County Criminal District Attorney, 127 North Woodrow Lane, Denton, Texas 76205

Re: Whether a commissioners court is authorized to establish certain policies restricting employees associations for whose benefit payroll deductions for membership dues may be made and related question (RQ-0314-JC)

**S U M M A R Y**

A commissioners court is authorized to establish a policy restricting the employees associations for whose benefit payroll deductions for membership dues may be made under section 155.001(b) of the Texas Local Government Code to those employees associations having a specified minimum membership or of specified duration. The phrase "bona fide employees association," as used in section 155.001(b), means an organization of employees, formed in good faith to promote a common purpose and is broader than a "labor union" or a "labor organization."

**Opinion No. JC-0370**

The Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio Street, Box 1, Pearsall, Texas 78061-3100

Re: Whether a county may pay accrued vacation or compensatory time to two sheriff's deputies if, when the time accrued, the county did not permit such payments, and related question (RQ-0324-JC)

**S U M M A R Y**

A county may not pay accrued vacation or compensatory time to two deputy sheriffs if, when the time accrued, the county did not permit such payments. A county commissioners court has a nondelegable duty to review the county payroll and to approve warrants. A county treasurer may not disburse county funds without the county commissioners court's approval. See Tex. Loc. Gov't Code Ann. §113.041(a), (c) (Vernon Supp. 2001).

**For further information, please call 512 463-2110.**

TRD-200102297

Susan D. Gusky  
Assistant Attorney General  
Office of the Attorney General  
Filed: April 23, 2001



Request for Opinions

**RQ-0371-JC**

Mr. Charles E. Bell, M.D., Executive Deputy Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199

Re: Whether federal law preempts regulation by the State Board of Health under chapter 439 of the Health and Safety Code, which relates to certain drugs to be shipped to foreign countries (Request No. 0371-JC)

**Briefs requested by May 11, 2001**

**RQ-0372-JC**

The Honorable Michael L. Williams, Chair, Texas Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-2967

Re: Whether the Railroad Commission is responsible for implementing the legislative directive of section 39.9048, Utilities Code, to implement "a program to keep the costs of fuel, such as natural gas, used for generating electricity low" (Request No. 0372-JC)

**Briefs requested by May 12, 2001**

**RQ-0373-JC**

The Honorable David Sibley, Chair, Business and Commerce Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Applicability of section 43.076, Local Government Code, to business users of water and sanitary sewer service that have paid taxes to a water district (Request No. 0373-JC)

**Briefs requested by May 11, 2001**

**RQ-0374-JC**

The Honorable Frank Madla, Chair, Intergovernmental Relations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether the Railroad Commission may promulgate a rule imposing standards of conduct on its members in a contested case proceeding (Request No. 0374-JC)

**Briefs requested by May 11, 2001**

**For further information, please call 512-463-2110.**

TRD-200102296  
Susan D. Gusky  
Assistant Attorney General  
Office of the Attorney General  
Filed: April 23, 2001



# 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.

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## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS--STANDARDS

##### 1 TAC §251.9

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.9, concerning the use and distribution of 9-1-1 funds for addressing maintenance by local governments. The amendments are proposed in order to more efficiently accommodate a broad range of local needs and requests for maintaining the addressing location information, recognizing that it forms the foundation of enhanced 9-1-1 databases which are crucial to delivering effective and efficient responses to emergency calls.

Section 251.9, Guidelines for Addressing Maintenance Funds, defines the 9-1-1 addressing data maintenance project and delineates funding parameters in support of the local governmental entities that perform this important function. This rule was designed to provide for continued maintenance of the initial 9-1-1 data developed in the rural addressing program as defined in §251.3, Guidelines for Addressing Funds. As the program has progressed and a statewide database has been implemented, the CSEC recognizes that modifications may be needed in order to transition this rule into the next phase of 9-1-1 data maintenance. In taking this step, CSEC staff has worked with the Texas Association of Regional Councils (TARC) Regional 9-1-1 Coordinators subcommittee to attempt to modify the language and specific funding parameters of the rule.

The rule was previously posted for comment in October, 2000, with CSEC staff and TARC 9-1-1 coordinators working together to identify language and funding parameters that would accommodate a broad range of local needs. CSEC staff made recommendations to the TARC group that would have provided for broader funding parameters while redistributing maintenance funding based upon county population and growth, as opposed

to requests. The TARC Regional 9-1-1 Coordinators subcommittee reviewed and considered the staff recommendation, but were unable to come to a consensus on acceptance or an alternative set of funding parameters. At the December, 2000 Commission meeting, the Commission voted to table the proposed rule as posted to provide additional time for TARC to consider the rule.

Since the December Commission meeting, staff has had discussions with TARC representatives and has determined that a new approach to §251.9 may be in order. CSEC proposes that all references to "addressing maintenance" be changed to "9-1-1 data maintenance" to reflect a move in a new direction to a more comprehensive approach to maintaining the location information that is so crucial to providing an enhanced level of 9-1-1 service. The amendment also changes the title of the rule to Guidelines for 9-1-1 Data Maintenance.

Carey F. Spence, interim executive director, has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Spence also has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be better utilization of funds for local addressing maintenance needs. The maintenance of maps and records associated with an addressing system enable efficient operation of an E9-1-1 system and the delivery of a caller's location. There will be no effect on small businesses. There are 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 §251.9 must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Carey F. Spence, Interim Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

Section 251.9 is proposed under Health and Safety Code, Chapter 771, Sections 771.051, 771.055, 771.056, and 771.057; and the Texas Administrative Code, Part XII, Chapter 251, Regional

Plan Standards, which provides the Commission on State Emergency Communications with the authority to develop and amend a regional plan that meets standards set for the operation of prompt and efficient 9-1-1 service throughout a region.

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

*§251.9. Guidelines for 9-1-1 Data [Addressing] Maintenance [Funds].*

The [Advisory] Commission on State Emergency Communications (Commission) has adopted a policy regarding 9-1-1 data [Funds addressing] maintenance and the use of state funds. These guidelines address the use and distribution of 9-1-1 Funds and other related funds. The maintenance of 9-1-1 data [street addresses] is essential to E9-1-1 systems utilizing the Automatic Location Identification (ALI) feature, which displays the locations of 9-1-1 callers.

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

(A) 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 also conforms to NENA adopted database standards.

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

(C) Addressing Completion - A county addressing project, based upon the inventory, has corrected address errors, assigned street addresses, provided all new or changed addresses to telephone companies, and established a maintenance method.

(D) Capital Replacement Cost - The non-recurring cost of replacing equipment purchased with 9-1-1 funds amortized over a selected period of time.

(E) 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 emergency service provider boundaries as well as other associated data.

(F) Emergency Communications 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, D, or E.

(G) Graphical Display of Location Information - The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call or inquiry that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations and the ability to zoom, pan, and show other related geographical information or features.

(H) Geographic Information System (GIS) - A system necessary to map emergency service number (ESN) boundaries and reflect annexations and other feature changes; to list emergency service provider translations for ESNs; to provide and maintain master street address guide (MSAG) format; to validate and resolve database discrepancies; to project new addresses and block ranges as an initial assignment or correction; for ongoing issuance of new addresses; and for locator maps for emergency services providers.

(I) Regional Planning Council (RPC) - A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).

(J) Strategic Plan - As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support planned levels of 9-1-1 service within a defined area of the state. The strategic plan shall cover a two year planning period and specifically projects 9-1-1 costs and revenues associated with the above including equalization surcharge requirements.

(i) Strategic Plan Component - Within a 9-1-1 implementation priority level, a category of 9-1-1 activity and/or equipment generally associated with 9-1-1 implementation cost.

(ii) Strategic Plan Level - A Commission established statewide implementation priority generally associated with a level of 9-1-1 service - e.g., Automatic Number Identification (ANI).

(K) Unaddressed County - A county in Texas, which has not completely assigned new addresses and provided all new or changed addresses to telephone companies under a county addressing process.

(2) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Commission may 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 designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the Commission has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of service. In the funding of such projects, it has been the policy of the Commission to fund geographic information systems and the development of digital maps to support such activities. The Commission recognizes that the maintenance of 9-1-1 data [addressing] systems is essential to the proper operation of an E9-1-1 system and the delivery of a caller's location. If not properly maintained, the maps and records associated with a 9-1-1 data [an addressing] system will soon become unreliable and problematic.

(A) A regional planning council or emergency communication district applying on behalf of a county which is operating 9-1-1 service and has completed a county addressing project is considered eligible.

(B) Interlocal agreements shall be executed between the regional planning council and the county. The agreement shall identify the responsibilities of all parties and provide for the reporting of performance measures.

(C) A 9-1-1 data [An addressing] maintenance plan shall be submitted by the regional planning council in conjunction with the approved strategic plan. The maintenance plan shall provide an overview of all projected activities, identify all parties involved and their associated responsibilities.

(D) Budgets shall be developed by the local governments each fiscal year, identifying all projected 9-1-1 data [addressing] maintenance expenditures. These budgets will be reviewed during the strategic plan review process. Activities performed by the regional planning council shall be identified within its administrative budget.

(E) 9-1-1 data [Addressing] maintenance funds will be allocated based on need as justified by the local government and approved by the Commission. If equalization surcharge funds are required for 9-1-1 data [addressing] maintenance, they shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II, and III activities, in that order.

(F) Budgeted costs associated with 9-1-1 Data [Addressing] Maintenance shall be monitored by the Commission staff for consistency with approved strategic plans.

(3) Requesting 9-1-1 Data [Addressing] Maintenance Funds. A strategic plan amendment from a regional planning council or a request from an emergency communication district is required as a means of requesting funds under this program.

(A) A strategic plan amendment from a regional planning council or a request from an emergency communication district must contain the following:

(i) Certification of a fully executed interlocal agreement between the regional planning council and the county;

(ii) A 9-1-1 data [An addressing] maintenance plan identifying all activities and responsible parties involved; and

(iii) An approved budget outlining 9-1-1 data [addressing] maintenance components and projected expenditures.

(B) Funds requested by a regional planning council or an emergency communication district shall be reflected as an expenditure on the Commission Financial Status Report.

(4) Budget Components. A regional planning council or an emergency communication district must submit a 9-1-1 data [an addressing] maintenance budget to the Commission for approval. 9-1-1 data [Addressing] maintenance budgets may include the following cost components listed in subparagraphs (A)-(K) of this paragraph:

(A) Personnel. Unless otherwise justified, 0.5 FTE will be the maximum allowable for each county. For each staff position, the following must be provided:

(i) Position title;

(ii) Duties related to 9-1-1 data [addressing] maintenance;

(iii) Total salary for the budget period;

(iv) Chargeable salary (total salary less release time);

(v) Percentage of time to be charged to 9-1-1 data [addressing] maintenance; and

(vi) Total salary chargeable to 9-1-1 data [addressing] maintenance.

(B) Travel. Total local travel estimated for the budget period multiplied by the current reimbursement rate for use of personally owned vehicles as defined by the State of Texas. List the cost rate for county owned vehicles.

(C) Supplies. Total costs associated with consumable office supplies to be purchased during the budget period. Also, total costs associated with the reproduction of maps for use by local emergency service agencies may be reflected as part of this item.

(D) Rent. Total square feet of space devoted to 9-1-1 data [addressing] maintenance times the rental rate to be charged during the budget period.

(E) Maintenance and Repairs. Total maintenance costs for 9-1-1 data [addressing] maintenance equipment during the budget period. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included.

(F) Communications. Total costs for communications including telephone, fax, courier, etc., during the budget period.

(G) Postage and Mailing. Total costs for postage and mailing services expected during the budget period.

(H) Utilities. Total costs for utilities such as electricity, gas, water, etc., expected during the budget period.

(I) Training. Total costs for training associated with 9-1-1 data [addressing] maintenance functions expected during the budget period.

(J) Other. Total costs for other items not identified in subparagraphs (A)-(I) of this paragraph.

(K) Street Sign Replacement. Cost share of the replacement of existing street signs located in the unincorporated areas of the county. This item shall not include the purchase of new signs in the county subsequent to the completion of rural addressing.

(5) Capital Replacement. Costs for the replacement of equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan Capital Recovery (Addressing) component. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included. A capital replacement schedule will be submitted to the Commission by the regional planning council.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102324

Carey F. Spence

Interim Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-6933



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to §§20.1 and 20.3, new §§20.10 - 20.17, and the repeal of §§20.2 and 20.10, 20.13 and 20.14, all concerning quarantine requirements for cotton pest control. The amendments and new sections are proposed to prevent the artificial re-infestation of boll weevil into an area that is suppressed, functionally eradicated, or eradicated. The boll weevil eradication program in Texas was initiated in 1994 in an effort to rid the state of the boll weevil. There are now 11 active eradication zones in the state comprising approximately 6 million acres of cotton. The Southern Rolling Plains Boll Weevil Eradication Zone was one of the first eradication zones implemented and it has now reached the functionally eradicated status. Once a zone has become eradicated but is still surrounded by infested counties, the zone can still become re-infested from outside areas. Elimination of weevil re-infestations can be expensive. In areas of the southeastern United States, the cost to stop re-infestations ranged from \$20,000 to over one million dollars with an average cost of \$125,000 per outbreak. The proposed rules will help protect the Southern Rolling Plains Zone, and other zones reaching



the eradication stage in the future, from boll weevil re-infestation through the establishment of quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area. This proposal was developed using input obtained from a Boll Weevil Quarantine Task Force composed of representatives from cotton producer associations including the Texas Cotton Ginners Association, the Texas Agricultural Extension Service, the Boll Weevil Technical Advisory Committee of the Texas Boll Weevil Eradication Foundation and the Foundation.

The repeal of §20.2 is proposed because the department has proposed a new Subchapter B of Chapter 20, which does not require the payment of an inspection fee. The department also proposes the repeal of the current Subchapter B. Quarantine Requirements §§20.10, 20.13 and 20.14. The repeal of these sections is proposed because new sections have been added to replace §§20.10, 20.13 and 20.14 and current sections have been updated. New Subchapter B. Quarantine Requirements §§20.10-20.17 will replace those now in effect.

Section 20.1 defines terms used in Chapter 20 and is amended to include new definitions of the terms "compliance agreement, functionally eradicated area, hostable cotton, protection plan, restricted area, and trap " and amended definitions of "certificate, cotton, cotton products, destroyed, or destruction, eradicated area, seed cotton, suppressed area, and treatment." Definitions of "quarantined area" and "quarantined articles" are deleted since they are defined within new §20.11 and new §20.15, respectively. The definition of "inspector" is deleted because that term is not used in the proposed new sections. The amendments to §20.3 clarify the section and make it consistent with proposed new §§20.10-20.17.

New §20.10 - 20.11 defines the pest and the quarantined areas. New §20.12 - 20.14 establishes three categories of boll weevil eradication (suppressed, functionally eradicated, and eradicated areas) and identifies counties within the functionally eradicated area. The Texas Boll Weevil Eradication Foundation recommended to the department that the Southern Rolling Plains Boll Weevil Eradication Zone be declared functionally eradicated and provided scientific documentation acceptable to the department indicating that movement of regulated articles into this zone presented a threat to the success of boll weevil eradication. The data indicated that boll weevil numbers were well below the requirement of an average of 0.001 per trap. Consequently, the commissioner declared the Southern Rolling Plains Zone to be functionally eradicated on September 20, 2000. Regulated articles are listed in new §20.15. The articles include equipment involved in harvesting and transportation of cotton as well as cotton products. New §20.16 describes restrictions for movement of cotton products and equipment as well as methods by which movement is allowed. Equipment listed as a regulated article must be cleaned or treated prior to moving into a restricted area. Other regulated articles may be moved into a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department. New §20.17 provides for inspections and certificates to be issued by an authorized representative of the department to certify that regulated articles have been treated and do not represent a pest risk.

Ed Gage, coordinator for pest management programs, has determined that for the first five-year period the proposed amendments and new sections are in effect, there is no anticipated fiscal impact on state or local governments as a result of administration and enforcement of the sections.

Mr. Gage has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of administering and enforcing the new and amended sections is that the risk of artificial re-infestation of a restricted area by boll weevils will be minimized thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. In other eradicated areas of the United States, it is estimated that growers are saving an average of \$36 per acre in reduced pesticide applications and earning an additional \$42 per acre from increased cotton yield. Preventing re-infestation by boll weevils in restricted areas may enable Texas cotton producers to achieve similar results.

There will be a cost to some individuals, microbusinesses and small businesses including cotton producers, transporters, ginners and others directly involved in cotton production. There will be a cost incurred for cleaning and/or treating equipment, such as cotton pickers, cotton strippers, boll buggies, and module trucks, used for harvesting or transporting cotton when moved into or through restricted areas. There will also be a cost incurred for cleaning and/or treating equipment used in stalk destruction, such as tractors, shredders, plows, and disks, when moved into or through restricted areas. Cleaning involves the physical removal of hostable material through methods such as removal by hand, high-pressure air cleaning, and high pressure washing. Treatment of equipment will involve fumigation of regulated articles as prescribed by the department. Costs associated with cleaning or treating equipment will vary depending upon the cleaning or treatment method used, the cleanliness of the equipment, the capabilities of the grower, and the type of equipment being cleaned or treated. Because of the wide range of variables involved in cleaning and treating equipment, a cost to affected persons cannot be determined at this time. There may also be costs associated with implementing a protection plan if mitigating measures are required to safeguard a restricted area from re-infestation by boll weevil. In the proposed rule, a protection plan is defined as a plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures will vary depending upon the location selected, the type of equipment being used, and the associated quarantined article. Measures may include, but are not limited to, the following: approved insecticide field treatment of cotton and cotton products prior to delivery to an area or a gin; requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; and the monitoring of boll weevils at a specified site(s). Costs associated with implementing a protection plan will vary due to the wide range of mitigating measures possible. In some circumstances, the use of current practices or equipment by a producer, transporter, ginner, or other responsible parties may be approved in the protection plan, thereby minimizing costs to those affected by the proposed rule. Because each plan may be unique and situation specific, costs associated with implementing a protection plan cannot be determined at this time.

Comments on the proposal may be submitted to Ed Gage, coordinator for pest management, Texas Department of Agriculture,

P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 4 TAC §20.1, §20.3

The amendments to §§20.1 and 20.3 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapters A and D.

#### §20.1. Definitions.

[In addition to the definitions set out in the Texas Agriculture Code and in the Texas Administrative Code the] The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) (No change.)
- (2) Certificate--A phytosanitary certificate issued by an authorized representative of the department [inspector] allowing the movement of plants or plant products, or a document issued by an authorized representative of the department [inspector] allowing the movement of equipment or vehicles.
- (3) (No change.)
- (4) Compliance agreement - A written agreement signed by a person engaged in growing, distributing, handling or moving regulated articles whereby, he or she agrees to comply with conditions specified in the agreement concerning the basis upon which a certificate may be issued for movement of regulated articles or for the purposes of compliance with applicable rules.
- (5) [(4)] Cotton--All parts of cotton and wild cotton plants of the genera *Gossypium* and *Thurberia* [~~except cotton products~~].
- (6) [(5)] Cotton destruction date--The date established in this chapter for the destruction of cotton stalks.
- (7) [(6)] Cotton lint--All forms of raw ginned cotton except linters and gin waste.
- (8) [(7)] Cotton products--Seed cotton, cotton lint, linters, oil mill waste, gin waste, squares, bolls, gin trash, cotton seed, cottonseed hulls, and all other forms of unmanufactured cotton fiber.
- (9) [(8)] Cotton seed--The seed of the cotton plant, separated from lint.
- (10) [(9)] Destroyed, or destruction--Killed by cutting or dislodging the roots, burying the entire plant, or by an alternative method which completely kills the leaves, stems, flowers, fruit, and roots of the plant. In zones with a shred and/or plow destruction requirement, shredded cotton will be considered destroyed.

(11) [(10)] Eradicated area--An area [declared by the commissioner of agriculture to be] apparently free of [either pink bollworm or] boll weevil or, for which scientific documentation acceptable to the department has been provided that indicates that no boll weevils were captured for a period of at least one cotton growing season by weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency. [infestation. The commissioner may grant such a designation after a written recommendation is submitted to the department from the Texas Boll Weevil Eradication Foundation, the Director of the Texas Agricultural Extension Service, the Director of the Texas Agricultural Experiment Station, or the United States Department of Agriculture (USDA) which includes competent scientific documentation indicating the area is apparently free of infestation.]

(12) [(11)] Eradication area--A defined area in which a boll weevil [an] eradication program has been initiated.

(13) Foundation - The Texas Boll Weevil Eradication Foundation, Inc.

(14) Functionally eradicated area - An area meeting the trapping criteria for a suppressed area with no confirmed evidence of boll weevil reproduction occurring in the area and no oviposition in squares, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program. The boll weevil population must be equal to or less than an average of 0.001 boll weevils per trap per week for the cotton growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(15) [(12)] Gin notes--Short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.

(16) [(13)] Gin trash--All material produced during the cleaning and ginning of seed cotton, except lint, linters, cotton seed, and gin waste.

(17) [(14)] Gin waste--All forms of unmanufactured waste cotton fiber resulting from the ginning of seed cotton, including gin notes.

(18) Hostable cotton --Cotton that has fruiting structures such as buds, squares, flowers or bolls present.

[(15) Inspector--An employee of the department, or the United States Department of Agriculture who is authorized to conduct inspections, or an individual designated by the commissioner of agriculture. ]

(19) [(16)] Linters--Residual unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

(20) [(17)] Non-hostable cotton--Cotton that is free of fruiting structures such as buds, squares, flowers or bolls.

(21) [(18)] No-till cotton field--A field in which the soil is left undisturbed from the time the cotton crop is harvested until the new crop is planted in narrow slots and weed control is accomplished using herbicides.

(22) [(19)] Oil mill waste--Waste products, including linters, derived from the milling of cotton seed.

(23) [(20)] Plow--To dislodge or sever the roots of plants in a manner which prevents further growth. Equipment used to accomplish this could include a stalk puller, any type of plow, or similar implement.

(24) Protection plan - A plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures may include, but are not limited to, the following:

(A) approved insecticide field treatment of cotton and cotton products prior to delivery to an area or a gin;

(B) requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; and

(C) monitoring of boll weevils at a specified site(s).

~~[(21) Quarantined area--Any portion of the State of Texas which has been placed under quarantine by the department due to cotton pest(s) infestation.]~~

~~[(22) Quarantined articles--The following articles are quarantined: boll weevil; pink bollworm; cotton; cotton products; any means of transportation which have been used in conveying cotton products and any other item contaminated with cotton or cotton pests, including any equipment used in harvesting cotton. Baled cotton and manufactured cotton products are not quarantined articles.]~~

(25) ~~[(23)]~~ Regrowth cotton--Cotton that has not been completely destroyed in such a way as to absolutely prevent further growth.

(26) Restricted Area --An area designated as suppressed, functionally eradicated, or eradicated of boll weevils, as those terms are defined in this section.

(27) ~~[(24)]~~ Seed cotton--All forms of un-ginned ~~[unginned]~~ cotton from which the seed has not been separated.

(28) ~~[(25)]~~ Stalk puller--An implement which dislodges the roots of cotton plants by pulling up the stalks.

(29) ~~[(26)]~~ Standing stalks--Original, undestroyed cotton plants growing in a field before or after harvesting.

(30) ~~[(27)]~~ Suppressed area--An area ~~[declared by the commissioner of agriculture]~~in which some boll weevil reproduction may be present in the area or a portion thereof, and in which the movement of regulated ~~[quarantined]~~ articles presents a threat to the success of the boll weevil eradication program ~~[of either pink bollworm or boll weevil]~~. The boll weevil population must be equal to or less than 0.025 boll weevils per trap per week for the cotton- growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency. ~~[The commissioner may grant such a designation after a written recommendation is submitted to the department from the Texas Boll Weevil Eradication Foundation, the Director of the Texas Agricultural Extension Service, the Director of the Texas Agricultural Experiment Station, or the United States Department of Agriculture (USDA) which includes competent scientific documentation indicating that movement of quarantined articles into the area presents a threat to the success of eradication in an eradication area.]~~

(31) Trap -A type of adult boll weevil pheromone trap approved by the Texas Boll Weevil Eradication Foundation.

(32) ~~[(28)]~~ Treatment--The act of eliminating possible cotton pest infestation(s) by means of cleaning, sprayingor fumigation to ~~[in instances in which normal cleaning will not]~~ eliminate the infestation.

(33) ~~[(29)]~~ Volunteer cotton--Cotton developing after the growing season from incidental seeds.

### §20.3. Violations and Enforcement Actions.

(a) Violations. In addition to any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 74, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 71 or Chapter 74:

(1) Failure to comply with cotton stalk destruction requirements outlined in Subchapter C of this chapter (relating to Stalk Destruction Program) constitutes a violation.

(2) Failure to submit a notification of alternative stalk destruction methods when required constitutes a violation.

(b) Enforcement Actions.

(1) The department may direct any means of conveyance containing plants, plant products, or other items susceptible to cotton pest contamination to an authorized inspection point for treatment or reinspection prior to entering a restricted area ~~[zone]~~.

(2) Any violation of these rules is subject to civil and criminal penalties. In addition, the department may revoke a certificate or compliance agreement, and/or assess administrative penalties as prescribed in the Texas Agriculture Code, §12.020, against any person for a violation of these rules and/or for failure to adhere to the conditions of a protection plan.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102325

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 463-4075



### 4 TAC §20.2

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

The repeal of §20.2. is proposed in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code; and §74.006, which provides the department with the authority to adopt rules as necessary for the enforcement of boll weevil eradication.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 12 and Chapter 74, Subchapter A.

### §20.2. Inspection Fee.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102326

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: June 3, 2001  
For further information, please call: (512) 463-4075



## SUBCHAPTER B. QUARANTINE REQUIREMENTS

### 4 TAC §§20.10, 20.13, 20.14

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

The repeal of §§20.10, 20.13 and 20.14 is proposed in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code, §74.006, which provides the department with statutory authority to adopt rules as necessary for the enforcement of boll weevil eradication.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 12 and Chapter 74, Subchapter A.

§20.10. *Quarantined Areas.*

§20.13. *Restrictions.*

§20.14. *Certificates.*

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102327

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 463-4075



### 4 TAC §§20.10 - 20.17

New §§20.10-20.17, are proposed under the Texas Agriculture Code (the Code), §71.003, which provides the department with the authority to declare quarantines around pest-free areas to protect such areas from a pest; §71.005, which provides the department with the authority to prevent the movement of any plant or pest which poses a risk to a pest-free area; §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article.

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

§20.10. *Quarantined Pest.*

The quarantined pest is the boll weevil, *Anthonomus grandis Boheman*, in any living stage of development.

§20.11. *Quarantined Areas.*

The quarantined areas are those areas not declared as suppressed, functionally eradicated, or eradicated.

§20.12. *Suppressed Areas.*

The commissioner may grant a request for declaration of an area as suppressed after a written recommendation is submitted to the department from the Foundation, supported by scientific documentation acceptable to the department indicating that movement of regulated articles into the area presents a threat to the success of boll weevil eradication.

§20.13. *Functionally Eradicated Areas.*

(a) The commissioner may grant a request for declaration of an area as functionally eradicated after a written recommendation is submitted to the department from the Foundation, supported by scientific documentation acceptable to the department indicating that movement of regulated articles into the area presents a threat to the success of boll weevil eradication.

(b) The Southern Rolling Plains Boll Weevil Eradication Zone, as defined in the Texas Agriculture Code, §74.1021, has been declared as functionally eradicated by the commissioner.

§20.14. *Eradicated Areas.*

The commissioner may grant a request for declaration of an area as eradicated after a written recommendation is submitted to the department from the Foundation, supported by scientific documentation acceptable to the department indicating that movement of regulated articles into the area presents a threat to the success of boll weevil eradication.

§20.15. *Regulated Articles.*

(a) The quarantined pest as defined in §20.10 of this title (relating to Quarantined Pest).

(b) Cotton harvesting equipment and other equipment associated with the production and transport of cotton, including, but not limited to the following:

(1) harvest equipment:

(A) cotton pickers;

(B) cotton strippers; or

(C) other mechanical harvesting equipment;

(2) handling and transport equipment:

(A) module builders;

(B) module hauling equipment;

(C) boll buggies; and

(D) any other equipment or vehicles associated with cotton harvest;

(3) miscellaneous associated equipment:

(A) trucks (service trucks, parts trucks, harvesting equipment trucks);

(B) flatbed trailers, portable living quarters, fuel and all other support vehicles; and

(C) tractors, shredders, plows, discs, and other equipment associated with stalk destruction activities which have regulated articles present; and

(4) vehicles used to remove and/or transport cotton products.

(c) Gin equipment previously used for the ginning of cotton .

(d) Cotton products as defined in §20.1 of this title (relating to Definitions).

(e) Cotton as defined in §20.1 of this title (relating to Definitions).

(f) All other products, articles or means of conveyance not covered above when the quarantined pest is present.

§20.16. Restrictions.

(a) General. Movement of regulated articles is prohibited in the following cases:

(1) from or through a quarantined area to an eradicated area, a functionally eradicated area, or a suppressed area;

(2) from or through a suppressed area to an eradicated area or a functionally eradicated area;

(3) from or through a functionally eradicated area to an eradicated area; or

(4) when the department determines that the movement may cause an increase in infestation of boll weevil.

(b) Exemptions. The following are exempt from the requirements of this subchapter:

(1) cotton seed and vehicles transporting the seed;

(2) baled cotton, baled gin notes and linters and vehicles transporting baled cotton and baled gin notes and linters; and

(3) manufactured cotton products.

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section:

(1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as used gin equipment, otherwise prohibited from movement by these rules, may be moved to or through a restricted area provided the equipment is free of cotton products and boll weevils in any stage of development or treated in one of the following manners:

(A) physical removal of hostable material including, but not limited to, the following methods:

(i) removal by hand.

(ii) high-pressure air cleaning; or

(iii) high pressure washing; or

(B) fumigation of regulated articles as prescribed by the department.

(2) Cotton products and other regulated articles, otherwise prohibited from movement by these rules, may be transported to or through a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department.

§20.17. Inspections and Certificates.

(a) Inspections. An inspection for movement of regulated articles within Texas is not required, but may be obtained upon request to the department.

(b) Certificates.

(1) An inspection certificate may be issued certifying the movement of regulated articles in compliance with these rules, for the current growing season, if an authorized representative of the department determines:

(A) that adequate measures have been taken to ensure that there will be little or no danger of increased infestation of the quarantined pest or expansion of a regulated area by such movement; or

(B) that the articles have been treated to eliminate infestation of the quarantined pest, for a specific location; or

(C) that such movement will not result in the spread or increased infestation of the quarantined pest.

(2) Any certificate may be withdrawn or cancelled if an authorized representative of the department determines that the use of the issued certificate may result in the spread of the quarantined pest.

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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Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

##### **SUBCHAPTER B. REGISTRATION**

###### **22 TAC §1.21**

The Texas Board of Architectural Examiners proposes an amendment to Chapter 1, Subchapter B, §1.21 concerning the conditions under which an applicant may obtain architectural registration in Texas. The amendment to this section is intended to clarify the eligibility requirements for architectural registration in Texas.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand and abide by it.

There is expected to be no cost to small businesses or individuals as a result of the amendment.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to Section 7 and Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including the duty to establish registration standards.

This proposed amendment does not affect any other statutes.

*§1.21. Registration by Examination[Eligibility].*

(a) In order to obtain architectural registration by examination in Texas, an Applicant~~[applicant shall]~~:

(1) shall have a professional degree from an architectural educational program accredited by the National Architectural Accreditation Board (NAAB) [and] or from an architectural educational program outside the United States where an Educational Evaluation Service for Architects (EESA) evaluation has concluded that the program is equivalent to an NAAB accredited professional program;

(2) shall successfully demonstrate completion of the Texas Board of Architectural Examiners~~[requirements of the]~~ Intern Development Training Requirement; and~~[Program (IDP) pursuant to the Texas Table of Diversified Experience Requirements for the IDP.]~~

(3) shall successfully complete the architectural registration examination as more fully described in Subchapter C.

(b) The following Applicants~~[applicants]~~ for architectural registration shall not be required to ~~[demonstrate that they have completed]~~ complete the requirements of the IDP:

(1) Applicants~~[applicants]~~ for registration by examination who successfully demonstrate that prior to January 1, 1984, they acquired eight years of acceptable architectural experience or eight years of a combination of acceptable education and experience;

(2) Applicants~~[applicants]~~ for reciprocal registration who successfully demonstrate that they acquired at least three years of acceptable architectural experience following registration in another jurisdiction; such architectural experience shall be evaluated according to the Texas Table of Equivalents for Education and Experience in Architecture.~~[architecture.]~~

(c) An Applicant~~[applicant]~~ for architectural registration by examination who commenced his/her architectural education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.

(d) For purposes of this section, an Applicant~~[applicant]~~ shall be considered to have "commenced" his/her architectural education upon enrollment in an acceptable architectural educational program.

~~[(e) Applicants for the Architect Registration Examination shall process application records through the National Council of Architectural Registration Boards (NCARB).]~~

(e) ~~[(f)]~~ Pursuant to the provisions of §231.302 of the Texas Family Code, each applicant shall submit his/her social security number ~~to~~~~[on forms prescribed by]~~ the Board. The Applicant's social security number ~~[Such information]~~ shall be considered confidential as stated in §231.302(e) of the Texas Family Code.

(f) The Board may take action against an Applicant or Candidate pursuant to §1.151

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

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TRD-200102259

Cathy L Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



**22 TAC §1.22**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.22 pertaining to the factors which would cause the denial of an applicant's eligibility as a candidate for registration.

Simultaneously, the agency is proposing a new rule with section number 1.21(f) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter B, as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

*§1.22. Exceptions.*

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

Filed with the Office of the Secretary of State, on April 20, 2001.

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Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §1.22 which pertains to allowing an architect from another jurisdiction to apply for registration in Texas by reciprocal transfer.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 1, Subchapter B, as mandated by Article IX of the General Appropriations Act. The new rule simply reorganizes and restates existing standards so that they will be easier to understand and follow.

New §1.22 requires that an individual seeking architectural registration through reciprocal transfer must demonstrate that he or she has an active registration in good standing in another jurisdiction whose registration requirements are substantially equivalent to those of Texas or that he or she currently is certified by the National Council of Architectural Registration Boards.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed rule is in effect there will be no measurable fiscal implications for state or local government as a result of enforcing or administering it.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the registration rules to understand and abide by them.

There is expected to be no measurable impact on small business or individuals because the new rule simply restates existing requirements.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to Section 3(b) and Section 8(a) of Article 249a, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules regarding reciprocal registration standards.

These proposed sections do not affect any other statutes.

§1.22. Registration by Reciprocal Transfer.

(a) A person who holds a valid certificate of architectural registration in another jurisdiction may apply for architectural registration in Texas by reciprocal transfer.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant currently holds an architectural registration that is active and in good standing in another jurisdiction and that jurisdiction's architectural registration requirements are substantially equivalent to Texas architectural registration requirements; or

(2) the Applicant currently holds a Certificate Record from the National Council of Architectural Registration Boards (NCARB) that is in good standing.

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

Filed with the Office of the Secretary of State, on April 20, 2001.  
TRD-200102260

Cathy L. Hendricks, AISD/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



**22 TAC §1.23**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.23 pertaining to the forms and instructions an application needs to submit an application for registration.

Simultaneously, the agency is proposing a new rule with section number 1.23(a) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§1.23. Forms and Instructions.

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

Filed with the Office of the Secretary of State, on April 20, 2001.

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Cathy L. Hendricks, AISD/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §1.23 which sets forth the procedures for applying for architectural registration in Texas.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 1, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §1.23 requires all applicants to apply for registration through the National Council of Architectural Registration Boards (NCARB) and allows the Board to require additional information or documentation from the applicant during the review process. It requires the Board to notify each applicant in writing regarding approval or rejection of the application.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand and abide by them and that it will be clear that the Board may require additional information or documentation from an applicant to supplement the NCARB application materials.

There is expected to be no measurable impact on small business or individuals.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

These proposed sections do not affect any other statutes.

§1.23. Application Process.

(a) Applicants for architectural registration by examination or by reciprocal transfer must apply through NCARB. Each Applicant for architectural registration is responsible for having NCARB transmit to the Board a completed application with all required supporting documentation.

(b) Upon receipt of the completed application and all required supporting documentation from NCARB and receipt of the required application fee, the Board shall evaluate the Applicant's application materials. The Board may require additional information or documentation from the Applicant.

(c) The board will notify each Applicant in writing regarding the approval or rejection of the Applicant's application.

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

Filed with the Office of the Secretary of State, on April 20, 2001.  
TRD-200102261

Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



**22 TAC §1.24**

The Texas Board of Architectural Examiners proposes an amendment to Chapter 1, Subchapter B, §1.24 concerning fees. The amendment is intended to clarify the existing rule and also intended to require that the Board publish its fee schedule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand it and also that people will be better informed of the Board's actions in relation to fees.

There is expected to be no cost to small businesses or individuals as a result of this amendment.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to Section 3(b) and Section 3(h) of Article 249a, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including rules related to fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

§1.24. Fees.

The Board shall establish a schedule of fees for services provided by the Board, including fees related to application procedures. The fee schedule established by the Board shall be published, and copies shall be available from the Board's office. [The current schedule of fees required by the Board for application, examination, registration, renewal, and reinstatement is available from the Board's office.]

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

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Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
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For further information, please call: (512) 305-8535



**22 TAC §§1.25 - 1.29**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.25 pertaining to how the Board will process an application upon its receipt from NCARB; §1.26 pertaining to notifying applicants of the approval or rejection of their applications; §1.27 pertaining to the length of time an application will be maintained; §1.28 pertaining to reciprocal transfers; and §1.29 pertaining to education and experience equivalencies.

Simultaneously, the agency is proposing new rules 1.23(b), 1.23(c), 1.25, 1.22 and 1.23(c), and 1.21(b) to replace rules 1.25, 1.26, 1.27, 1.28 and 1.29, respectively which are proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter B, as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§1.25. *Processing*

§1.26. *Approval/Rejection.*

§1.27. *Continuance.*

§1.28. *Reciprocal Transfer.*

§1.29. *Education and Experience Equivalencies.*

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102266

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



**22 TAC §1.25**

The Texas Board of Architectural Examiners proposes new §1.25 which sets forth conditions under which a properly submitted application will continue to be valid.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 1, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §1.25 states that an application will remain valid for three years, after which the Board may require the applicant or candidate to update the application or reapply. It requires an applicant or candidate to pay an annual record maintenance fee or the application file will be closed. It also allows a closed application file to be reopened during the five years following its closure as long as all unpaid record maintenance fees are paid.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand them and that applicants will have an additional two years during which they may reopen closed files.

There is expected to be no measurable impact on small business or individuals.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to Section 3(b) of Article 249a, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

These proposed sections do not affect any other statutes.

§1.25. Pending Applications.

(a) A properly submitted application for registration by examination will be effective for three years from the date it is received by the Board. After three years, the Board may require the Applicant or Candidate to update the application or reapply.

(b) Each Candidate approved for examination must pay an annual record maintenance fee as prescribed by the Board or the Candidate's application file will be closed. A Candidate may reopen an application file that was closed pursuant to this section only after payment of record maintenance fees for the current year and for each year the file has been closed. An application file that has been closed for five years or longer may not be reopened.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535

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## SUBCHAPTER C. EXAMINATIONS

### 22 TAC §§1.41 - 1.49, 1.51

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.41 pertaining to who is required to take the examination; §1.42 pertaining to when the examination may be taken; §1.43 pertaining to how the examination will be formatted; §1.44 pertaining to when, where, and how candidates must report for the exam; §1.45 pertaining to the conditions which must be provided at the place where the examination is given; §1.46 pertaining to how scores will be reported to exam participants; §1.47 pertaining to how an individual may obtain printed subject matter pertaining to the examination; §1.48 pertaining to the conditions under which a candidate may retake individual divisions of the examination; §1.49 pertaining to the conditions under which passing scores may be exchanged with other NCARB member boards; and §1.51 pertaining to how long examination material will be maintained.

Simultaneously, the agency is proposing new rules with section numbers 1.41 through 1.44 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter C, as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§1.41. *Required.*

§1.42. *Schedules.*

§1.43. *Format.*

§1.44. *Reporting.*

§1.45. *Conditions.*

§1.46. *Scoring.*

§1.47. *Subject Matter.*

§1.48. *Reexamination.*

§1.49. *Transfer of Passing Scores.*

§1.51. *Disposal of Examination Material.*

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

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TRD-200102268

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535

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### 22 TAC §§1.41 - 1.44

The Texas Board of Architectural Examiners proposes new §1.41 which sets forth the general requirements for the architectural registration examination in Texas; new §1.42 pertaining to scoring procedures for the architectural registration examination; new §1.43 relating to the timeframe within which the registration exam must be completed; and new §1.44 pertaining to transferring examination scores to other architectural registration boards and the conditions under which the Texas board will accept scores transferred from other boards.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 1, Subchapter C, as mandated by Article IX of the General Appropriations Act.

New §1.41 states that applicants must complete all sections of the Architect Registration Examination (ARE) and requires that every applicant obtain approval from the Board to take the exam. The Board may approve an applicant only if the applicant has completed all of the educational requirements and at least six months of the experiential requirements. It also requires each candidate to achieve a passing score in every division of the ARE. New §1.42 requires the Board to provide an explanation of the scoring procedures to each candidate prior to examination. It stipulates that the scores be determined by the entity that administers the examination and prohibits the Board from reviewing the scores to determine validity. It relieves the Board of liability in the event a candidate takes a section(s) of the exam but fails to receive a score, instead authorizing the candidate to retake the section or sections with the corresponding fee waived. New §1.43 requires each candidate approved for examination after December 31, 2001, to pass all sections within five years after the approval date or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. It requires each candidate approved for examination by the Board prior to January 1, 2002, to pass all sections of the examination no later than December 31, 2006, or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. New §1.44 makes it possible for a candidate's examination score to be transferred from one National Council of Architectural Registration Boards (NCARB) member board to another but allows a candidate to

maintain only one active application at a time. It requires that a candidate whose examination score is transferred to Texas to satisfy all current requirements for architectural registration in Texas and to pass all sections of the examination no later than five years from the date the first examination section was passed or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect, there will be no measurable fiscal implications for state or local government as a result of enforcing or administering the new sections.

The public benefits expected as a result of the new rules are that it will be easier for persons affected by the provisions of the rules to understand them and also that the limitation on opportunities for retaking the exam will better ensure that persons approved for registration possess the knowledge and skills necessary for competent professional practice.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to §6 and §3(b) of Article 249a, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the registration examination.

These proposed sections do not affect any other statutes.

#### §1.41. Requirements.

(a) Every Applicant for architectural registration by examination in Texas must successfully complete all sections of the Architect Registration Examination (ARE).

(b) An Applicant may take the ARE at any official ARE testing center but must satisfy all Texas registration requirements in order to obtain architectural registration by examination in Texas.

(c) The Board shall not approve an Applicant for examination unless the Applicant has completed the educational requirements and at least six (6) months of the experiential requirements for architectural registration in Texas.

(d) Each Candidate must achieve a passing score in each division of the ARE. Scores from individual divisions may not be averaged to achieve a passing score.

#### §1.42. Scoring.

(a) An explanation of the scoring procedures for the ARE shall be provided to each Candidate prior to examination.

(b) A Candidate's ARE scores shall be determined by the entity that administers the examination. The Board shall not review any ARE score to determine its validity.

(c) If, for any reason, a Candidate takes a section or sections of the ARE but does not receive a score for the section or sections, the Board shall have no liability beyond authorizing the Candidate to retake the section or sections with the corresponding fee waived.

#### §1.43. Reexamination.

(a) Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five years after the date the Candidate is approved for examination by the Board. A Candidate approved for examination by the

Board after December 31, 2001, who does not pass all sections of the examination within five years after approval will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

#### §1.44. Transfer of Passing Scores.

(a) A Candidate's examination score may be transferred from one NCARB member board to another. The acceptance of the Candidate's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one jurisdiction at all times. In order to be approved for architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all current requirements for architectural registration in Texas.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102267

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §§1.61 - 1.72

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §1.61 pertaining to who is eligible to receive a certificate of registration; §1.62 pertaining to conditions under which certificates of registration are issued; §1.63 pertaining to conditions under which a certificate of registration must be displayed; §1.64 pertaining to obtaining a replacement certificate of registration; §1.65 pertaining to conditions under which a certificate of registration must be surrendered; §1.66 pertaining to the requirement to register annually; §1.67 pertaining to how annual registration renewal notices will be provided; §1.68 pertaining to consequences of failing to register annually; §1.69 pertaining to

how a registration which has been revoked may be reinstated; §1.70 pertaining to requirement to comply with requirements of the Texas Education Code, §57.491 regarding student loan repayment; §1.71 pertaining to eligibility for and restrictions on inactive status; and §1.72 pertaining to continuing education requirements for registration renewal.

Simultaneously, the agency is proposing new rules with section numbers 1.61 through 1.69 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 1, Subchapter D, as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §3(b) of Article 249a, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

*§1.61. Certificates of Registration.*

*§1.62. Issuance and Description.*

*§1.63. Display of Certificate.*

*§1.64. Replacement Certificate.*

*§1.65. Surrender of Certificates.*

*§1.66. Annual Registration Required.*

*§1.67. Annual Registration Procedure.*

*§1.68. Failure to Register Annually.*

*§1.69. Reinstatement.*

*§1.70. Denial of Annual Renewal.*

*§1.71. Inactive Registration Status.*

*§1.72. Continuing Education Program Requirements.*

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

Filed with the Office of the Secretary of State, on April 20, 2001.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535

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**22 TAC §§1.61 - 1.69**

The Texas Board of Architectural Examiners proposes new §1.61 which describes who is qualified to receive a certificate of registration and what information will be provided on the certificate; new §1.62 pertaining to where a certificate of registration must be displayed and how to acquire duplicate copies for display in multiple locations; new §1.63 relating to the conditions under which a registrant may obtain a replacement certificate of registration; new §1.64 pertaining to the conditions under which a certificate of registration must be surrendered to the Board; new §1.65 pertaining to when and how a certificate of registration must be renewed; new §1.66 pertaining to how a revoked certificate of registration may be reinstated; new §1.67 pertaining to the discontinuation of emeritus status and the options available to registrants who currently have an emeritus registration; new §1.68 pertaining to inactive status for certificates of registration, and new §1.69 pertaining to continuing education requirements that must be met in order for a registrant to renew a certificate of registration.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 1, Subchapter D, as mandated by Article IX of the General Appropriations Act.

New §1.61 provides that certificates of registration be issued only to individuals who have satisfied the registration requirements and stipulates that each certificate of registration indicate the architect's name, registration number, and effective date of the registration and acknowledge the architect's right to practice architecture in Texas. New §1.62 requires an architect to display his/her certificate of registration at his/her place of practice and to display a duplicate certificate at each additional location. It provides a method for obtaining a duplicate certificate from the Board and prohibits an architect from copying his/her certificate of registration. New §1.63 provides a method for an architect whose certificate of registration has been damaged or misplaced to obtain a replacement certificate from the Board. New §1.64 sets forth the conditions under and by which a certificate of registration that has been suspended or revoked must be surrendered to the Board. New §1.65 requires that each certificate of registration be renewed annually upon payment of an annual renewal fee. It requires the Board to send annual registration renewal notices to each architect's most current address of record with instructions and deadlines for remitting a completed registration renewal form and the prescribed fee. It requires an architect to notify the Board in writing of each change of address. It requires the Board to impose a late payment penalty if the renewal form and fee are not received on or before the expiration date. It stipulates that the Board may not renew the architect's certificate of registration if it receives official notice that he or she has defaulted on the repayment of a guaranteed student loan or has failed to pay court ordered child support. If a certificate of registration is not renewed within one year of the expiration date, the Board may take action to revoke it. New §1.66 provides that a revoked registration may be reinstated after an application for reinstatement has been submitted and approved and the reinstatement fee paid. It sets forth that reinstatement may be denied if the certificate of registration has been revoked for a continuous period of five years or longer or the reinstatement applicant has committed any act that could serve as the basis for the rejection

of an application for registration or for the revocation of a certificate of registration; it also provides methods for reinstatement if the registration certificate has been revoked for a continuous period of five years or longer. New §1.67 provides that emeritus status be discontinued effective September 1, 2001, and that every architect who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the architect's next registration expiration date and waives the status change fee for emeritus architects who transfer to active or inactive status. New §1.68 provides an inactive registration status for architects, prohibits inactive registrants from practicing architecture and from using any form of the title "architect" to describe themselves or their work, and provides for the suspension or revocation of the registration and/or for a fine of up to \$1,000 for each day that an inactive registrant has practiced architecture or used a form of the title "architect" improperly. It prohibits an inactive registrant from using or displaying his/her architectural seal, registration certificate, or pocket card. It requires an inactive registrant to pay an annual record maintenance fee and an annual fee for the architectural candidate scholarship fund established by the 76th Texas Legislature. It sets forth the procedures for returning an inactive registration to an active status. It requires an inactive registrant whose registration has been inactive for five years or longer to successfully complete all sections of the current registration examination before returning to active status or furnish evidence that the inactive registrant currently holds an architectural registration in another jurisdiction with registration requirements that are substantially equivalent to Texas requirements. It sets forth the reasons for rejecting an application to return to active status. New §1.69 requires each architect to complete a minimum number of continuing education hours during each annual registration period. It defines what constitutes a continuing education hour and describes what activities will and will not be creditable. It sets forth the conditions under which exemptions from the continuing education requirements may be granted. It requires the architect to indicate compliance with the continuing education requirements on his or her annual registration renewal form. It requires each architect to maintain a record and proof of fulfillment of the requirements and it specifies the period of time the annual record shall be maintained. It allows the Board to require an architect to produce documentation to prove compliance with the continuing education requirements and sets forth a method for doing so. It sets forth the consequences for failing to comply with the continuing education requirements and for reporting false information. It allows an architect who completes a continuing education activity that is directly related to more than one of the professions regulated by the Board to receive credit for all of the professions to which it directly relates.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect the fiscal implications for state or local government as a result of enforcing or administering the new sections might include a slight increase in revenue from architects who currently hold emeritus status and wish to switch to active status. This slight increase should be offset by costs related to enforcement of the new emeritus rule.

The public benefits expected as a result of the new rules are that persons affected by the provisions of the rules will be better able to understand and follow them and also that the confusion surrounding emeritus status will be eliminated.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to §3(b), §11A, §12, and §3(e) of Article 249a, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to certificates of registration, annual renewal, inactive status, and continuing education.

These proposed sections do not affect any other statutes.

§1.61. Issuance of Certificates of Registration.

(a) Certificates of registration shall be issued to individuals who have satisfied the registration requirements as described in the Architects' Registration Law and the Rules and Regulations of the Board.

(b) Each certificate of registration issued by the Board shall identify the Architect by name and registration number, indicate the effective date of the registration, and acknowledge the Architect's right to practice architecture in Texas.

§1.62. Display of Certificate.

(a) Each Architect holding an active certificate of registration shall display it at his/her place of practice. If an Architect maintains an office in more than one location, the Architect shall display a duplicate certificate at each additional location.

(b) A duplicate certificate may be obtained only by filing with the Board an application for a duplicate certificate and paying a fee as prescribed by the Board. An Architect may not copy his/her certificate of registration in order to display it.

§1.63. Replacement of Certificate.

If an Architect's certificate of registration is lost or destroyed and the Architect's registration is current and in good standing, the Architect may obtain a replacement certificate by:

(1) submitting a written explanation regarding the loss or destruction of the certificate which requests a replacement certificate; and

(2) paying the fee prescribed by the Board for the replacement of a certificate of registration.

§1.64. Surrender of Certificate.

Upon receipt of written notice from the Board requiring the surrender of a certificate of registration that has been suspended or revoked, an Architect or former Architect shall immediately surrender his/her certificate of registration in the manner prescribed in the notice.

§1.65. Annual Renewal Procedure.

(a) Each certificate of registration must be renewed annually on or before the specified expiration date of the certificate of registration.

(b) Each Architect must pay an annual registration renewal fee as prescribed by the Board to renew his/her certificate of registration.

(c) The Board shall send annual registration renewal notices to each Architect at the Architect's most current address of record. Instructions and deadlines for remitting a completed registration renewal form and the prescribed fee will appear on each notice. An Architect must notify the Board in writing each time the Architect's address of record changes.

(d) If an Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Architect's certificate of registration, the Board shall impose a late payment penalty that must be paid before the Architect's certificate of registration may be renewed.

(e) If the Board receives official notice that an Architect has defaulted on the repayment of a guaranteed student loan, the Board may not renew the Architect's certificate of registration unless:

(1) the Architect presents to the Board a certificate from the Texas Guaranteed Student Loan Corporation certifying that the Architect has entered into a repayment agreement for the defaulted loan; or

(2) the renewal is the first renewal following the Board's receipt of official notice regarding the default.

(f) If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's certificate of registration.

(g) If a certificate of registration is not renewed within one year of the specified registration expiration date, the Board may take formal action to revoke the certificate of registration.

#### §1.66. Reinstatement.

(a) Once the revocation, cancellation, or surrender of an Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) An application for reinstatement may be denied on the following grounds:

(1) the certificate of registration has been revoked for a continuous period of five years or longer; or

(2) the reinstatement Applicant has committed any act that could serve as the basis for the rejection of an application for registration or for the revocation of a certificate of registration.

(c) If a certificate of registration has been revoked for a continuous period of five years or longer, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas architectural registration requirements.

#### §1.67. Emeritus Status.

Effective September 1, 2001, an Architect may not request or continue an emeritus architectural registration. Every Architect who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the Architect's next registration expiration date in order to continue to hold a valid certificate of registration. The status change fee will be waived for each emeritus Architect who transfers to active or inactive status.

#### §1.68. Inactive Status.

(a) An Architect whose registration is active and in good standing may apply for inactive registration status on a form prescribed by the Board before the expiration date of the registration.

(b) An inactive registrant may not practice architecture or use any form of the title "architect" to describe the registrant or the registrant's work. If an inactive registrant practices architecture or uses any

form of the title "architect" improperly, the inactive registrant's registration may be suspended or revoked or the inactive registrant may be fined up to \$1,000 for each day that the inactive registrant has practiced architecture or used a form of the title "architect" improperly.

(c) An inactive registrant shall not use or display his/her architectural seal, registration certificate, or pocket card during any period that his/her registration is inactive.

(d) An inactive registrant shall pay an annual record maintenance fee as prescribed by the Board.

(e) An inactive registrant shall pay an annual fee for the architectural candidate scholarship fund established by the 76th Texas Legislature.

(f) In order to return his/her registration to active status, an inactive registrant must:

(1) apply on a form prescribed by the Board;

(2) complete all continuing education requirements for each year the registration was inactive; and

(3) pay a fee as prescribed by the Board.

(g) An inactive registrant whose registration has been inactive for a continuous period of five years or longer must do the following before the inactive registrant may return to active status:

(1) successfully complete all sections of the current registration examination during the five years immediately preceding return to active status; or

(2) furnish evidence that the inactive registrant currently holds an architectural registration in another jurisdiction where the registration requirements are substantially equivalent to Texas architectural registration requirements and that the current architectural registration is active and in good standing.

(h) Applications to return to active status may be rejected for any of the reasons that an initial application for registration may be rejected or that a registration may be revoked.

(i) The Board may require that applications to return to active status include verification that the Applicant has complied with the laws governing the practice of architecture.

#### §1.69. Continuing Education Requirements.

(a) Each Architect shall complete a minimum of eight (8) continuing education program hours (CEPH) during each annual registration period. One CEPH shall represent a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(1) Architects shall complete a minimum of five (5) CEPH in structured course study. Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the National Council of Architectural Registration Boards. No credit shall be awarded for the same structured course for which the Architect has claimed credit during the preceding three (3) years.

(2) Architects may complete a maximum of three (3) CEPH in self-directed study. One (1) CEPH shall represent one (1) hour of self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Architect has not previously utilized for self-directed study.

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses or seminars dealing with technical architectural subjects sponsored by colleges or universities;

(2) Attendance at technical presentations or workshops on architectural subjects which are held in conjunction with conventions or seminars and are related to materials use and function;

(3) Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;

(4) Three (3) CEPH may be claimed per class hour spent teaching architectural courses or seminars as long as the Architect has not previously claimed credit for teaching the same course. College or university faculty may not claim credit for teaching.

(5) Hours spent in professional service to the general public which draws upon the Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(6) Hours spent in architectural research which is published or formally presented to the profession or public during the annual registration period;

(7) Hours spent in architectural self-directed study programs such as those organized or sponsored by the American Institute of Architects, the National Council of Architectural Registration Boards, or similar organizations acceptable to the Board.

(8) College or university credit courses dealing with architectural subjects or ethical business practices; each semester credit hour shall equal one (1) CEPH; each quarter credit hour shall equal one (1) CEPH;

(9) One (1) CEPH may be claimed for attendance at one (1) full-day session of a meeting of the Texas Board of Architectural Examiners; an Architect must attend the entire full-day session in order to receive credit.

(d) An Architect may be exempt from the continuing education requirements described in this subchapter for any of the following reasons:

(1) An Architect who is a first-time new Architect by examination or first-time Architect by reciprocity shall be exempt for his/her initial registration period, which shall not exceed one year;

(2) An emeritus Architect shall be exempt for any registration period during which the Architect's registration is in Emeritus Status;

(3) An inactive registrant shall be exempt for any registration period during which the registrant's registration is in inactive status, but all continuing education credits for each period of inactive registration shall be completed before the inactive registrant's registration may be returned to active status;

(4) An Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which

the Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days;

(5) An Architect who has an active registration in another jurisdiction that has registration requirements which are substantially similar to Texas registration requirements and that has a mandatory continuing education program shall be exempt for any registration period during which the Architect satisfies such other jurisdiction's continuing education program requirements; or

(6) An Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in Section 61.003, Education Code, and who in such position is engaged in teaching architecture.

(e) When renewing his/her annual registration, each Architect shall sign the statement on the renewal form attesting to the Architect's fulfillment of the mandatory continuing education program requirements during the preceding registration period. A maximum of eight (8) CEPH may be carried from one registration period to the next.

(1) A detailed record of the Architect's continuing education activities shall be recorded annually. Each Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of three years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the mandatory continuing education program requirements. The Architect shall be required to produce the documentation in the manner prescribed in the Board's written request. If acceptable documentation is not provided within thirty (30) days of request, claimed credit may be disallowed. The Architect shall have 180 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(f) Failure to fulfill the annual continuing education program requirements may result in disciplinary action by the Board.

(g) Any Architect who is found to have reported false information regarding the Architect's continuing education activities may be subject to disciplinary action by the Board.

(h) If an Architect is registered to practice more than one of the professions regulated by the Board and the Architect completes a continuing education activity that is directly related to more than one of the professions regulated by the Board, the Architect may submit that activity for credit for all of the professions to which it directly relates. The Architect must maintain a separate detailed record of continuing education activities for each profession.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## CHAPTER 3. LANDSCAPE ARCHITECTS

### SUBCHAPTER B. REGISTRATION

#### 22 TAC §3.21

The Texas Board of Architectural Examiners proposes an amendment to Chapter 3, Subchapter B, §3.21 concerning the conditions under which an applicant may obtain landscape architectural registration in Texas. The amendment to this section is intended to clarify the eligibility requirements for landscape architectural registration in Texas.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand and abide by it.

There is expected to be no cost to small businesses or individuals as a result of the amendment.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 4(a) and Section 5(a) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including the duty to establish registration standards.

This proposed amendment does not affect any other statutes.

#### §3.21. Registration by Examination~~[Eligibility].~~

(a) In order to obtain landscape architectural registration by examination in Texas, an Applicant:

(a) An applicant for landscape architectural registration by examination in Texas shall have received a professional degree from a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB) and shall successfully demonstrate that he/she has completed not less than two years' actual experience working directly under a licensed landscape architect or other experience approved by the Board.

(1) shall have a professional degree from a landscape architectural educational program accredited by the Landscape Architectural Accreditation Board (LAAB) or from a landscape architectural educational program outside the United States where an evaluation similar to an Educational Evaluation Service for Architects (EESA) has concluded that the program is equivalent to an LAAB accredited professional program;

(2) shall successfully demonstrate that he/she has gained not less than two years' actual experience working directly under a licensed landscape architect or other experience approved by the Board pursuant to the Texas Table of Equivalents for Education and Experience in Landscape Architecture; and

(3) shall successfully complete the landscape architectural registration examination as more fully described in Subchapter C of the Rules and Regulations of the Board.

(b) An Applicant ~~[applicant]~~ for landscape architectural registration by examination who commenced his/her landscape architectural

education or experience [in landscape architecture] prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.[in effect at that time.]

(c) For purposes of this section, an Applicant~~[applicant]~~ shall be considered to have "commenced" his/her landscape architectural education upon enrollment in an acceptable landscape architectural education program.

~~[(d) Effective August 16, 1996, applicants for the June 1997 and subsequent Landscape Architect Registration Examination administrations shall process their applications through the Council of Landscape Architectural Registration Boards (CLARB).]~~

(d) ~~[(e)]~~ Pursuant to the provisions of §231.302 of the Texas Family Code, each Applicant~~[applicant]~~ shall submit his/her social security number ~~to [on forms prescribed by]~~ the Board. The Applicant's social security number [Such information] shall be considered confidential as stated in §231.302(e) of the Texas Family Code.

(e) The Board may take action against an Applicant or Candidate pursuant to §3.151 of the Rules and Regulations of the Board.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



#### 22 TAC §3.22

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §3.22 pertaining to the factors which would cause the denial of an applicant's eligibility as a candidate for registration.

Simultaneously, the agency is proposing a new rule with section number 3.21(e) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.



No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§3.22. *Exceptions.*

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §3.22 which pertains to allowing a landscape architect from another jurisdiction to apply for registration in Texas by reciprocal transfer. The new rule changes the requirements for reciprocal registration from a complex scheme involving somewhat confusing standards to a much simpler set of standards that more closely follow the current statutory language.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §3.22 requires that an individual seeking landscape architectural registration through reciprocal transfer must demonstrate that he or she has an active registration in good standing in another jurisdiction whose registration requirements are substantially equivalent to those of Texas or that he or she currently is certified by the Council of Landscape Architectural Registration Boards.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed rule is in effect there will be no measurable fiscal implications for state or local government as a result of enforcing or administering it.

The public benefits expected as a result of the new rule are that the requirements for reciprocal registration will be simpler and, therefore, easier to apply.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 4(a) and Section (6) of Article 249c, Vernon's Texas Civil Statutes which provide

the Texas Board of Architectural Examiners with authority to promulgate, including rules regarding reciprocal registration standards.

The proposed new rule does not affect any other statutes.

§3.22. *Registration by Reciprocal Transfer.*

(a) A person who holds a valid certificate of landscape architectural registration in another jurisdiction may apply for landscape architectural registration in Texas by reciprocal transfer.

(b) In order to obtain landscape architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) The Applicant currently holds a landscape architectural registration that is active and in good standing in another jurisdiction and that jurisdiction's landscape architectural registration requirements are substantially equivalent to Texas landscape architectural registration requirements; or

(2) the Applicant currently holds a Council Certificate from the Council of Landscape Architectural Registration Boards (CLARB) that is in good standing.

(c) An Applicant for landscape architectural registration by reciprocal transfer must remit the required registration fee to the Board within sixty (60) days of the date of the tentative approval letter sent to the Applicant by the Board.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



**22 TAC §3.23**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §3.23 pertaining to the forms and instructions an application needs to submit an application for registration.

Simultaneously, the agency is proposing a new rule with section number 3.23(a) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering

new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

*§3.23. Forms and Instructions.*

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §3.23 which sets forth the procedures for applying for landscape architectural registration in Texas.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §3.23 requires all applicants to apply for registration through the Council of Landscape Architectural Registration Boards (CLARB) and allows the Board to require additional information or documentation from the applicant during the review process. It requires the Board to notify each applicant in writing regarding approval or rejection of the application.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand and abide by them and that it will be clear that the Board may require additional information or documentation from an applicant to supplement the CLARB application materials.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

The proposed new rule does not affect any other statutes.

*§3.23. Application Process.*

(a) Applicants for landscape architectural registration by examination or by reciprocal transfer must apply through CLARB. Each Applicant for landscape architectural registration is responsible for having CLARB transmit to the Board a completed application with all required supporting documentation.

(b) Upon receipt of the completed application and all required supporting documentation from CLARB and receipt of the required application fee, the Board shall evaluate the Applicant's application materials. The Board may require additional information or documentation from the Applicant.

(c) The Board will notify each Applicant in writing regarding the approval or rejection of the Applicant's application.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



**22 TAC §3.24**

The Texas Board of Architectural Examiners proposes an amendment to Chapter 3, Subchapter B, §3.24 concerning fees. The amendment is intended to clarify the existing rule and also intended to require that the Board publish its fee schedule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand it and also that people will be better informed of the Board's actions in relation to fees.

There is expected to be no cost to small businesses or individuals as a result of the amendment.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 4(a) and Section 4(b) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including rules related to fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

§3.24. *Fees.*

The Board shall establish a schedule of fees for services provided by the Board, including fees related to application procedures. The fee schedule established by the Board shall be published, and copies shall be available from the Board's office. [The current schedule of fees required by the Board for application, examination, registration, renewal, and reinstatement is available from the Board's office.]

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

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Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



**22 TAC §§3.25 - 3.28**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §3.25 pertaining to how the Board will process an application upon its receipt from NCARB; §3.26 pertaining to notifying applicants of the approval or rejection of their applications; §3.27 pertaining to the length of time an application will be maintained; and §3.28 pertaining to reciprocal transfers.

Simultaneously, the agency is proposing new rules 3.42(c) and 3.41(b), 3.23(c), 3.25(a), and 3.22 to replace rules 3.25, 3.26, 3.27, and 3.28, respectively, which are proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeals are proposed pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas

Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

The proposed repeals do not affect any other statutes.

§3.25. *Processing.*

§3.26. *Approval/Rejection.*

§3.27. *Continuance.*

§3.28. *Reciprocal Transfer.*

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

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Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



**22 TAC §3.25**

The Texas Board of Architectural Examiners proposes new §3.25 which sets forth conditions under which a properly submitted application will continue to be valid.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §3.25 states that an application will remain valid for three years, after which the Board may require the applicant or candidate to update the application or reapply. It requires an applicant or candidate to pay an annual record maintenance fee or the application file will be closed. It also allows a closed application file to be reopened during the five years following its closure as long as all unpaid record maintenance fees are paid.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand them and that applicants will have an additional two years during which they may reopen closed files.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 4(a) of Article 249c, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

The proposed new rule does not affect any other statutes.

§3.25. *Pending Applications.*

(a) A properly submitted application for registration by examination will be effective for three years from the date it is received by the Board. After three years, the Board may require the Applicant or Candidate to update the application or reapply.

(b) Each Candidate approved for examination must pay an annual record maintenance fee as prescribed by the Board or the Candidate's application file will be closed. A Candidate may reopen an application file that was closed pursuant to this section only after payment of record maintenance fees for the current year and for each year the file has been closed. An application file that has been closed for five years or longer may not be reopened.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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## SUBCHAPTER C. WRITTEN EXAMINATIONS

### 22 TAC §§3.41 - 3.51

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §3.41 pertaining to who is required to take the examination; §3.42 pertaining to when the examination may be taken; §3.43 pertaining to how the examination will be formatted; §3.44 pertaining to when, where, and how candidates must report for the exam; §3.45 pertaining to the conditions which must be provided at the place where the examination is given; §3.46 pertaining to how scores will be reported to exam participants; §3.47 pertaining to how an individual may obtain printed subject matter pertaining to the examination; §3.48 pertaining to the conditions under which a candidate may retake individual divisions of the examination; §3.49 pertaining to the conditions under which passing scores may be exchanged with other CLARB member boards; §3.50 pertaining to the conditions under which a candidate will be required to reapply to take the examination; and §3.51 pertaining to how long examination material will be maintained.

Simultaneously, the agency is proposing new rules with §§3.41 - 3.44 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter C as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§3.41. *Required.*

§3.42. *Schedules.*

§3.43. *Format.*

§3.44. *Reporting.*

§3.45. *Conditions.*

§3.46. *Scoring.*

§3.47. *Subject Matter.*

§3.48. *Reexamination.*

§3.49. *Transfer of Passing Scores.*

§3.50. *Reapplication.*

§3.51. *Disposal of Examination Material.*

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



### 22 TAC §§3.41 - 3.44

The Texas Board of Architectural Examiners proposes new §3.41 which sets forth the general requirements for the landscape architectural registration examination in Texas; new §3.42 pertaining to scoring procedures for the landscape architectural registration examination; new §3.43 relating to the timeframe within which the registration exam must be completed; and new §3.44 pertaining to transferring examination scores to other landscape architectural registration boards and the conditions under which the Texas board will accept scores transferred from other boards.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter C as mandated by Article IX of the General Appropriations Act.

New §3.41 states that applicants must complete all sections of the Landscape Architect Registration Examination (LARE) and requires that every applicant obtain approval from the Board to take the exam. The Board may approve an applicant only if the applicant has completed all of the educational requirements and at least six months of the experiential requirements. It also requires each candidate to achieve a passing score in every division of the LARE. New §3.42 describes the examination administration process and requires applicants to apply for the exam through the Council of Landscape Architectural Registration Boards (CLARB), requires the Board to administer the exam twice annually, establishes application deadlines, requires applicants to appear personally and provide identification at the time of the exam, and requires applicants to bring necessary tools to the exam. It requires the Board to provide an explanation of the scoring procedures to each candidate prior to examination. It stipulates that the scores be determined by the entity that administers the examination and prohibits the Board from reviewing the scores to determine validity. It relieves the Board of liability in the event a candidate takes a section(s) of the exam but fails to receive a score, instead authorizing the candidate to retake the section or sections with the corresponding fee waived. It also allows applicants to request review of their exams within 14 days of their receipt of the exam results and states that such review must be completed within 20 days of confirmation of the request. It states that CLARB shall retain exam materials for one year following administration. New §3.43 requires each candidate approved for examination after December 31, 2001, to pass all sections within five years after the approval date or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. It requires each candidate approved for examination by the Board prior to January 1, 2002, to pass all sections of the examination no later than December 31, 2006, or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. New §3.44 makes it possible for a candidate's examination score to be transferred from one Council of Landscape Architectural Registration Boards (CLARB) member board to another but allows a candidate to maintain only one active application at a time. It requires that a candidate whose examination score is transferred to Texas to satisfy all current requirements for landscape architectural registration in Texas and to pass all sections of the examination no later than five years from the date the first examination section was passed or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect, there will be no measurable fiscal implications for state or local government as a result of enforcing or administering the new sections.

The public benefits expected as a result of the new rules are that it will be easier for persons affected by the provisions of the rules to understand them and also that the limitation on opportunities for retaking the exam will better ensure that persons approved for registration possess the knowledge and skills necessary for competent professional practice.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to §5 and §4(a) of Article 249c, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the registration examination.

These proposed sections do not affect any other statutes

§3.41. Requirements.

(a) Every Applicant for landscape architectural registration by examination in Texas must successfully complete all sections of the Landscape Architect Registration Examination (LARE).

(b) An Applicant may take the LARE at any official LARE testing center but must satisfy all Texas registration requirements in order to obtain landscape architectural registration by examination in Texas.

(c) The Board shall not approve an Applicant for examination unless the Applicant has completed the educational requirements and at least six (6) months of the experiential requirements for landscape architectural registration in Texas.

(d) Each Candidate must achieve a passing score in each division of the LARE. Scores from individual divisions may not be averaged to achieve a passing score.

§3.42. Examination Administration and Scoring.

(a) An Applicant must apply for landscape architectural registration by examination through CLARB as described in Section 3.23.

(b) The LARE shall be administered by the Board twice annually in June and December.

(c) In order for an Applicant to take the LARE in June, the Applicant's application and supporting documentation must be postmarked or received by the Board no later than February 1st. In order for an Applicant to take the LARE in December, the Applicant's application and supporting documentation must be postmarked or received by the Board no later than August 15th. If the deadline falls on a date when the Board's office is closed, the application and supporting documentation must be postmarked or received by the Board no later than the next date when the Board's office is open.

(d) A Candidate who is approved to take the LARE must appear personally for examination as directed in the notification letter sent to the Applicant. In order to be admitted for examination, the Candidate must present the Candidate's identification card that was mailed to the Candidate prior to the examination date and must present a separate official form of identification bearing a recent photograph of the Candidate.

(e) Each Candidate shall be responsible for taking to the examination all tools necessary to complete the examination.

(f) An explanation of the scoring procedures for the LARE shall be provided to each Candidate before the examination is administered to the Candidate.

(g) A Candidate's LARE scores shall be determined by the entity that administers the examination. The Board shall not review any LARE score to determine its validity.

(h) A Candidate may review his/her own examination by requesting review within 14 days of receipt of the results of the examination. The Candidate must complete the review within 20 days of the date the Candidate receives a confirmation that the Candidate may review the examination.

(i) If, for any reason, a Candidate takes a section or sections of the LARE but does not receive a score for the section or sections, the Board shall have no liability beyond authorizing the Candidate to retake the section or sections with the corresponding fee waived.

(j) Each Candidate's examination material shall be retained by CLARB for a period of one year following the date the examination was administered.

§3.43. Reexamination.

(a) Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five years after the date the Candidate is approved for examination by the Board. A Candidate approved for examination by the Board after December 31, 2001, who does not pass all sections of the examination within five years after approval will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

§3.44. Transfer of Passing Scores.

(a) A Candidate's examination score may be transferred from one CLARB member board to another. The acceptance of the Candidate's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one jurisdiction at all times. In order to be approved for landscape architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all current requirements for landscape architectural registration in Texas.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§3.61 - 3.72

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §3.61 pertaining to who is eligible to receive a certificate of registration; §3.62 pertaining to conditions under which certificates of registration are issued; §3.63 pertaining to conditions under which a certificate of registration must be displayed; §3.64 pertaining to obtaining a replacement certificate of registration; §3.65 pertaining to conditions under which a certificate of Registration must be surrendered; §3.66 pertaining to the requirement to register annually; §3.67 pertaining to how annual registration renewal notices will be provided; §3.68 pertaining to consequences of failing to register annually; §3.69 pertaining to how a registration which has been revoked may be reinstated; §3.70 pertaining to requirement to comply with requirements of the Texas Education Code, §57.491 regarding student loan repayment; §3.71 pertaining to eligibility for and restrictions on inactive status ; and §3.72 pertaining to continuing education requirements for registration renewal.

Simultaneously, the agency is proposing new rules with §§3.61 - 3.69 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 3, Subchapter D as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §4(a) of Article 249c, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§3.61. *Certificates of Registration.*

§3.62. *Issuance and Description.*

§3.63. *Display of Certificate.*

§3.64. *Replacement Certificate.*

§3.65. *Surrender of Certificates.*

§3.66. *Annual Registration Required.*

§3.67. *Annual Registration Procedure.*

§3.68. *Failure to Register Annually.*

§3.69. *Reinstatement.*

§3.70. *Denial of Annual Renewal.*

§3.71. *Inactive Registration Status.*

§3.72. *Continuing Education Program Requirements.*

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102282

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



**22 TAC §§3.61 - 3.69**

The Texas Board of Architectural Examiners proposes new §3.61 which describes who is qualified to receive a certificate of registration and what information will be provided on the certificate; new §3.62 pertaining to where a certificate of registration must be displayed and how to acquire duplicate copies for display in multiple locations; new §3.63 relating to the conditions under which a registrant may obtain a replacement certificate of registration; new §3.64 pertaining to the conditions under which a certificate of registration must be surrendered to the Board; new §3.65 pertaining to when and how a certificate of registration must be renewed; new §3.66 pertaining to how a revoked certificate of registration may be reinstated; new §3.67 pertaining to the discontinuation of emeritus status and the options available to registrants who currently have an emeritus registration; new §3.68 pertaining to inactive status for certificates of registration, and new §3.69 pertaining to continuing education requirements that must be met in order for a registrant to renew a certificate of registration.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter D as mandated by Article IX of the General Appropriations Act.

New §3.61 provides that certificates of registration be issued only to individuals who have satisfied the registration requirements and stipulates that each certificate of registration indicate the landscape architect's name, registration number, and effective date of the registration and acknowledge the landscape architect's right to practice landscape architecture in Texas. New §3.62 requires a landscape architect to display his/her certificate of registration at his/her place of practice and to display a duplicate certificate at each additional location. It provides a method for obtaining a duplicate certificate from the Board and prohibits a landscape architect from copying his/her certificate of registration. New §3.63 provides a method for a landscape architect whose certificate of registration has been damaged or misplaced to obtain a replacement certificate from the Board. New §3.64 sets forth the conditions under and by which a certificate of registration that has been suspended or revoked must be surrendered to the Board. New §3.65 requires that each certificate of registration be renewed annually upon payment of an annual renewal fee. It requires the Board to send annual registration renewal notices to each landscape architect's most current address of record with instructions and deadlines for remitting a completed registration renewal form and the prescribed fee. It requires a landscape architect to notify the Board in writing of

each change of address. It requires the Board to impose a late payment penalty if the renewal form and fee are not received on or before the expiration date. It stipulates that the Board may not renew the landscape architect's certificate of registration if it receives official notice that he or she has defaulted on the repayment of a guaranteed student loan or has failed to pay court ordered child support. If a certificate of registration is not renewed within one year of the expiration date, the Board may take action to revoke it. New §3.66 provides that a revoked registration may be reinstated after an application for reinstatement has been submitted and approved and the reinstatement fee paid. It sets forth that reinstatement may be denied if the certificate of registration has been revoked for a continuous period of five years or longer or the reinstatement applicant has committed any act that could serve as the basis for the rejection of an application for registration or for the revocation of a certificate of registration; it also provides methods for reinstatement if the registration certificate has been revoked for a continuous period of five years or longer. New §3.67 provides that emeritus status be discontinued effective September 1, 2001, and that every landscape architect who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the landscape architect's next registration expiration date and waives the status change fee for emeritus landscape architects who transfer to active or inactive status. New §3.68 provides an inactive registration status for landscape architects, prohibits inactive registrants from practicing landscape architecture and from using any form of the title "landscape architect" to describe themselves or their work, and provides for the suspension or revocation of the registration and/or for a fine of up to \$1,000 for each day that an inactive registrant has practiced landscape architecture or used a form of the title "landscape architect" improperly. It prohibits an inactive registrant from using or displaying his/her landscape architectural seal, registration certificate, or pocket card. It requires an inactive registrant to pay an annual record maintenance fee. It sets forth the procedures for returning an inactive registration to an active status. It requires an inactive registrant whose registration has been inactive for five years or longer to successfully complete all sections of the current registration examination before returning to active status or furnish evidence that the inactive registrant currently holds a landscape architectural registration in another jurisdiction with registration requirements that are substantially equivalent to Texas requirements. It sets forth the reasons for rejecting an application to return to active status. New §3.69 requires each landscape architect to complete a minimum number of continuing education hours during each annual registration period. It defines what constitutes a continuing education hour and describes what activities will and will not be creditable. It sets forth the conditions under which exemptions from the continuing education requirements may be granted. It requires the landscape architect to indicate compliance with the continuing education requirements on his or her annual registration renewal form. It requires each landscape architect to maintain a record and proof of fulfillment of the requirements and it specifies the period of time the annual record shall be maintained. It allows the Board to require a landscape architect to produce documentation to prove compliance with the continuing education requirements and sets forth a method for doing so. It sets forth the consequences for failing to comply with the continuing education requirements and for reporting false information. It allows a landscape architect who completes a continuing education activity that is directly related to more than one of the professions regulated by the Board to receive credit for all of the professions to which it directly relates.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect the fiscal implications for state or local government as a result of enforcing or administering the new sections might include a slight increase in revenue from landscape architects who currently hold emeritus status and wish to switch to active status. This slight increase should be offset by costs related to enforcement of the new emeritus rule.

The public benefits expected as a result of the new rules are that persons affected by the provisions of the rules will be better able to understand and follow them and also that the confusion surrounding emeritus status will be eliminated.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to Section 4(a), Section 6A, Section 7, and Section 10(a) of Article 249c, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to certificates of registration, annual renewal, inactive status, and continuing education.

These proposed sections do not affect any other statutes

#### §3.61. Issuance of Certificates of Registration.

(a) Certificates of registration shall be issued to individuals who have satisfied the registration requirements as described in the Landscape Architects' Registration Law and the Rules and Regulations of the Board.

(b) Each certificate of registration issued by the Board shall identify the Landscape Architect by name and registration number, indicate the effective date of the registration, and acknowledge the Landscape Architect's right to practice as a licensed Landscape Architect in Texas.

#### §3.62. Display of Certificate.

(a) Each Landscape Architect holding an active certificate of registration shall display it at his/her place of practice. If a Landscape Architect maintains an office in more than one location, the Landscape Architect shall display a duplicate certificate at each additional location.

(b) A duplicate certificate may be obtained only by filing with the Board an application for a duplicate certificate and paying a fee as prescribed by the Board. A Landscape Architect may not copy his/her certificate of registration in order to display it.

#### §3.63. Replacement of Certificate.

If a Landscape Architect's certificate of registration is lost or destroyed and the Landscape Architect's registration is current and in good standing, the Landscape Architect may obtain a replacement certificate by:

(1) submitting a written explanation regarding the loss or destruction of the certificate which requests a replacement certificate; and

(2) paying the fee prescribed by the Board for the replacement of a certificate of registration.

#### §3.64. Surrender of Certificate.

Upon receipt of written notice from the Board requiring the surrender of a certificate of registration that has been suspended or revoked, a

Landscape Architect or former Landscape Architect shall immediately surrender his/her certificate of registration in the manner prescribed in the notice.

#### §3.65. Annual Renewal Procedure.

(a) Each certificate of registration must be renewed annually on or before the specified expiration date of the certificate of registration.

(b) Each Landscape Architect must pay an annual registration renewal fee as prescribed by the Board to renew his/her certificate of registration.

(c) The Board shall send annual registration renewal notices to each Landscape Architect at the Landscape Architect's most current address of record. Instructions and deadlines for remitting a completed registration renewal form and the prescribed fee will appear on each notice. A Landscape Architect must notify the Board in writing each time the Landscape Architect's address of record changes.

(d) If a Landscape Architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Landscape Architect's certificate of registration, the Board shall impose a late payment penalty that must be paid before the Landscape Architect's certificate of registration may be renewed.

(e) If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a guaranteed student loan, the Board may not renew the Landscape Architect's certificate of registration unless:

(1) the Landscape Architect presents to the Board a certificate from the Texas Guaranteed Student Loan Corporation certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or

(2) the renewal is the first renewal following the Board's receipt of official notice regarding the default.

(f) If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect's certificate of registration.

(g) If a certificate of registration is not renewed within one year of the specified registration expiration date, the Board may take formal action to revoke the certificate of registration.

#### §3.66. Reinstatement.

(a) Once the revocation, cancellation, or surrender of a Landscape Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) An application for reinstatement may be denied on the following grounds:

(1) the certificate of registration has been revoked for a continuous period of five years or longer; or

(2) the reinstatement Applicant has committed any act that could serve as the basis for the rejection of an application for registration or for the revocation of a certificate of registration.

(c) If a certificate of registration has been revoked for a continuous period of five years or longer, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five years immediately preceding reinstatement; or



(2) verification that the Applicant currently holds a landscape architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas landscape architectural registration requirements.

§3.67. Emeritus Status.

Effective September 1, 2001, a Landscape Architect may not request or continue an emeritus landscape architectural registration. Every Landscape Architect who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the Landscape Architect's next registration expiration date in order to continue to hold a valid certificate of registration. The status change fee will be waived for each emeritus Landscape Architect who transfers to active or inactive status.

§3.68. Inactive Status.

(a) A Landscape Architect whose registration is active and in good standing may apply for inactive registration status on a form prescribed by the Board before the expiration date of the registration.

(b) An inactive registrant may not practice landscape architecture or use the title "landscape architect" to describe the registrant or the registrant's work. If an inactive registrant practices landscape architecture or uses the title "landscape architect" improperly, the inactive registrant's registration may be suspended or revoked or the inactive registrant may be fined up to \$1,000 for each day that the inactive registrant has practiced landscape architecture or used the title "landscape architect" improperly.

(c) An inactive registrant shall not use or display his/her landscape architectural seal, registration certificate, or pocketcard during any period that his/her registration is inactive.

(d) An inactive registrant shall pay an annual record maintenance fee as prescribed by the Board.

(e) In order to return his/her registration to active status, an inactive registrant must:

(1) apply on a form prescribed by the Board;

(2) complete all continuing education requirements for each year the registration was inactive; and

(3) pay a fee as prescribed by the Board.

(f) An inactive registrant whose registration has been inactive for a continuous period of five years or longer must do the following before the inactive registrant may return to active status:

(1) successfully complete all sections of the current registration examination during the five years immediately preceding return to active status or

(2) furnish evidence that the inactive registrant currently holds a landscape architectural registration in another jurisdiction where the registration requirements are substantially equivalent to Texas landscape architectural registration requirements and that the current landscape architectural registration is active and in good standing.

(g) Applications to return to active status may be rejected for any of the reasons that an initial application for registration may be rejected or that a registration may be revoked.

(h) The Board may require that applications to return to active status include verification that the Applicant has complied with the laws governing the registration of landscape architects.

§3.69. Continuing Education Requirements.

(a) Each Landscape Architect shall complete a minimum of eight (8) continuing education program hours (CEPH) during each annual registration period. One CEPH shall represent a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(1) Landscape Architects shall complete a minimum of five (5) CEPH in structured course study. Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the Council of Landscape Architectural Registration Boards. No credit shall be awarded for the same structured course for which the Landscape Architect has claimed credit during the preceding three (3) years.

(2) Landscape Architects may complete a maximum of three (3) CEPH in self-directed study. One (1) CEPH shall represent one (1) hour of self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Landscape Architect has not previously utilized for self-directed study.

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional landscape architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) The Board has final authority to determine whether to award or deny credit claimed by a Landscape Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses or seminars dealing with technical landscape architectural subjects sponsored by colleges or universities;

(2) Attendance at technical presentations or workshops on landscape architectural subjects which are held in conjunction with conventions or seminars and are related to materials use and function;

(3) Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;

(4) Three (3) CEPH may be claimed per class hour spent teaching landscape architectural courses or seminars as long as the Landscape Architect has not previously claimed credit for teaching the same course. College or university faculty may not claim credit for teaching.

(5) Hours spent in professional service to the general public which draws upon the Landscape Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(6) Hours spent in landscape architectural research which is published or formally presented to the profession or public during the annual registration period;

(7) Hours spent in landscape architectural self-directed study programs such as those organized or sponsored by the American Society of Landscape Architects, the Council of Landscape Architectural Registration Boards, or similar organizations acceptable to the Board;

(8) College or university credit courses dealing with landscape architectural subjects or ethical business practices; each semester

credit hour shall equal one (1) CEPH; each quarter credit hour shall equal one(1) CEPH;

(9) One (1) CEPH may be claimed for attendance at one (1) full-day session of a meeting of the Texas Board of Architectural Examiners; a Landscape Architect must attend the entire full-day session in order to receive credit.

(d) A Landscape Architect may be exempt from the continuing education requirements described in this subchapter for any of the following reasons:

(1) A Landscape Architect who is a first-time new Landscape Architect by examination or first-time Landscape Architect by reciprocity shall be exempt for his/her initial registration period, which shall not exceed one year;

(2) An emeritus Landscape Architect shall be exempt for any registration period during which the Landscape Architect's registration is in Emeritus Status;

(3) An inactive registrant shall be exempt for any registration period during which the registrant's registration is in inactive status, but all continuing education credits for each period of inactive registration shall be completed before the inactive registrant's registration may be returned to active status;

(4) A Landscape Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Landscape Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days;

(5) A Landscape Architect who has an active registration in another jurisdiction that has registration requirements which are substantially similar to Texas registration requirements and that has a mandatory continuing education program shall be exempt for any registration period during which the Landscape Architect satisfies such other jurisdiction's continuing education program requirements; or

(6) A Landscape Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in Section 61.003, Education Code, and who in such position is engaged in teaching landscape architecture.

(e) When renewing his/her annual registration, each Landscape Architect shall sign the statement on the renewal form attesting to the Landscape Architect's fulfillment of the mandatory continuing education program requirements during the preceding registration period. A maximum of eight (8) CEPH may be carried from one registration period to the next.

(1) A detailed record of the Landscape Architect's continuing education activities shall be recorded annually. Each Landscape Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of three years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require a Landscape Architect to produce documentation to prove that the Landscape Architect has complied with the mandatory continuing education program requirements. The Landscape Architect shall be required to produce the documentation in the manner prescribed in the Board's written request. If acceptable documentation is not provided within thirty (30) days of request, claimed credit may be disallowed. The Landscape Architect shall have 180 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit

to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(f) Failure to fulfill the annual continuing education program requirements may result in disciplinary action by the Board.

(g) Any Landscape Architect who is found to have reported false information regarding the Landscape Architect's continuing education activities may be subject to disciplinary action by the Board.

(h) If a Landscape Architect is registered to practice more than one of the professions regulated by the Board and the Landscape Architect completes a continuing education activity that is directly related to more than one of the professions regulated by the Board, the Landscape Architect may submit that activity for credit for all of the professions to which it directly relates. The Landscape Architect must maintain a separate detailed record of continuing education activities for each profession.

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102281

Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535

◆ ◆ ◆  
**CHAPTER 5. INTERIOR DESIGNERS**  
**SUBCHAPTER B. REGISTRATION**

**22 TAC §5.31**

The Texas Board of Architectural Examiners proposes an amendment to Chapter 5, Subchapter B, §5.31 concerning the conditions under which an applicant may obtain interior design registration in Texas. The amendment to this section is intended to clarify the eligibility requirements for interior design registration in Texas.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand and abide by it.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 5(a), Section 5(d), Section 9(b), and Section 9(c) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including the duty to establish registration standards.

This proposed amendment does not affect any other statutes.

§5.31. Registration by Examination~~[Eligibility]~~.

(a) In order to obtain interior design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of six years of approved interior design education and experience and shall successfully complete the interior design registration examination as more fully described in Subchapter C. For purposes of this section, an Applicant has "approved interior design education" if:

(1) The Applicant graduated from a program that has been granted professional status by the Foundation for Interior Design Education Research (FIDER) or the National Architectural Accreditation Board (NAAB) or from an interior design education program outside the United States where an evaluation similar to an Educational Evaluation Service for Architects (EESA) evaluation has concluded that the program is equivalent to a FIDER or NAAB accredited professional program;

(2) The Applicant has a doctorate, a master's degree, or a baccalaureate degree in interior design;

(3) The Applicant has:

(A) A baccalaureate degree in a field other than interior design, and

(B) An associate's degree or a two- or three-year certificate from an interior design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The applicant has:

(A) A baccalaureate degree in a field other than interior design, and

(B) An associate's degree or a two- or three-year certificate from a foreign interior design program approved or accredited by an agency acceptable to the Board;

(5) The applicant applied on or before August 31, 2010, and prior to that date, the applicant successfully completed:

(A) At least six years of actual experience working under the direct supervision of a registered interior designer or a registered architect;

(B) An associate's degree in interior design from an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board, and

(C) Credit for the equivalent of at least 60 semester credit hours toward any baccalaureate degree; or

(6) The applicant applied on or before August 31, 2010, and prior to that date, the Applicant successfully completed:

(A) At least four years of actual experience working under the direct supervision of a registered interior designer or a registered architect,

(B) A FIDER accredited pre-professional assistant level program, and

(C) Credit for the equivalent of at least 60 semester credit hours toward any baccalaureate degree.

(b) The Board shall evaluate the education and experience required by Subsection (a) in accordance with the Table of Equivalents for Education and Experience in Interior Design.

(c) For purposes of this section, the term "approved interior design education" does not include continuing education courses.

~~(d) [(b)] An Applicant for interior design registration by examination who [If the Applicant] commences completion of the educational requirements for registration after September 1, 2006[; the applicant] must graduate from a program that has been granted professional status by FIDER.~~

~~(e) For purposes of this section, the term "approved interior design education" does not include continuing education courses. }~~

(e) An Applicant for interior design registration by examination who commenced his/her interior design education or experience prior to September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999.

~~(f) [(d)] For purposes of this section, an applicant shall be considered to have "commenced" his/her interior design education upon enrollment in an acceptable interior design educational program.~~

~~(e) The Board shall evaluate the education and experience required by Subsection (a) in accordance with the edition of the Table of Equivalents for interior design in effect at the time the application is filed. }~~

~~(f) An Applicant who enrolled in an acceptable interior design education program before September 1, 1999, shall be subject to the rules and regulations relating to educational and experiential requirements as they existed on August 31, 1999. }~~

(g) An Applicant who filed an application for registration without examination prior to August 31, 1994, is subject to the rules and regulations relating to educational and experiential requirements in effect at the time the application was filed. Such Applicant must complete the required six years of experience on or before September 1, 2003, in order to be eligible for registration without examination.

~~(h) For purposes of this section, it is the Applicant's responsibility to demonstrate to the Board the requisite education and experience.~~

(h) [(f)] Pursuant to the provisions of §231.302 of the Texas Family Code, each applicant shall submit his/her social security number to[on forms prescribed by] the Board. The Applicant's social security number [Such information] shall be considered confidential as stated in 231.302(e) of the Texas Family Code. The Board may take action against an Applicant or Candidate pursuant to Section 5.161.

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102283

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



**22 TAC §5.32**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §5.32 pertaining to the factors which would cause the denial of an applicant's eligibility as a candidate for registration.

Simultaneously, the agency is proposing a new rule with section number 5.31(i) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 5, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

#### §5.32. *Exceptions.*

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102288

Cathy L. Hendricks ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §5.32 which pertains to allowing an interior designer from another jurisdiction to apply for registration in Texas by reciprocal transfer.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 5, Subchapter B, as mandated by Article IX of the General Appropriations Act. The new rule simply reorganizes and restates existing standards so that they will be easier to understand and follow.

New §5.32 requires that an individual seeking interior design registration in Texas by reciprocal transfer must demonstrate that he

or she has an active registration in good standing in another jurisdiction whose registration requirements are substantially equivalent to Texas requirements, the applicant has passed the NCIDQ examination, and the applicant has at least two years of experience.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed rule is in effect there will be no measurable fiscal implications for state or local government as a result of enforcing or administering it.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the registration rules to understand and abide by them.

There is expected to be no measurable impact on small business because the new rule simply restates existing requirements.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to §5(d) and §12 of Article 249e, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules regarding reciprocal registration standards.

These proposed sections do not affect any other statutes.

#### §5.32. *Registration by Reciprocal Transfer.*

(a) A person who holds a valid certificate of interior design registration in another jurisdiction may apply for interior design registration in Texas by reciprocal transfer.

(b) In order to obtain interior design registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant currently holds an interior design registration that is active and in good standing in another jurisdiction and that jurisdiction's interior design registration requirements are substantially equivalent to Texas interior design registration requirements;

(2) the Applicant has passed all sections of the NCIDQ examination; and

(3) the Applicant has completed at least two years of acceptable experience working as a licensed interior designer in a jurisdiction where the Applicant was licensed during the period of experience.

(c) An Applicant for interior design registration by reciprocal transfer must remit the required registration fee to the Board within sixty (60) days of the date of the tentative approval letter sent to the Applicant by the Board.

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

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Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



**22 TAC §5.33**

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §5.33 pertaining to the forms and instructions an application needs to submit an application for registration.

Simultaneously, the agency is proposing a new rule with section number 5.33(a) to replace the rule proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review of Title 22, Chapter 5, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to §5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

#### §5.33. *Forms and Instructions.*

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



The Texas Board of Architectural Examiners proposes new §5.33 which sets forth the procedures for applying for interior design registration in Texas.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 5, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §5.33 requires all applicants to apply for registration directly to the Board and allows the Board to require additional information or documentation from the applicant during the review process. It requires the Board to notify each applicant in writing regarding approval or rejection of the application.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand and abide by them and that it will be clear that the Board may require additional information or documentation during the review process.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The new rule is proposed pursuant to §5(d) of Article 249e, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

These proposed sections do not affect any other statutes.

#### §5.33. Application Process.

(a) Applicants for interior design registration by examination or by reciprocal transfer must apply for registration by submitting to the Board's office a completed registration application and all required supporting documentation.

(b) Upon receipt of the completed application and all required supporting documentation and receipt of the required application fee, the Board shall evaluate the Applicant's application materials. The Board may require additional information or documentation from the Applicant.

(c) The Board will notify each Applicant in writing regarding the approval or rejection of the Applicant's application.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



#### **22 TAC §5.34**

The Texas Board of Architectural Examiners proposes an amendment to Chapter 5, Subchapter B, §5.34 concerning fees. The amendment is intended to clarify the existing rule and also intended to require that the Board publish its fee schedule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

Ms. Hendricks anticipates that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of the proposed amendment will be that it will be easier for persons affected by the rule to understand it and also that people will be better informed of the Board's actions in relation to fees.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to Section 6(b), Section 6(c), and Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary for the performance of its statutory duties, including rules related to fees for services provided by the Board.

This proposed amendment does not affect any other statutes.

#### §5.34. Fees.

The Board shall establish a schedule of fees for services provided by the Board, including fees related to application procedures. The fee schedule established by the Board shall be published, and copies shall be available from the Board's office.~~[The current schedule of fees required by the Board for application, examination, registration, renewal, and reinstatement is available from the Board's office.]~~

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

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Cathy L. Hendricks, ASID/IIDA

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Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## 22 TAC §§5.35 - 5.39

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §5.35 pertaining to how the Board will process an applications application upon its receipt from NCARB; §5.36 pertaining to notifying applicants of the approval or rejection of their applications; §5.37 pertaining to the length of time an application will be maintained; §5.38 pertaining to reciprocal transfers; and §5.39 pertaining to education and experience equivalencies.

Simultaneously, the agency is proposing a new rules with section numbers 5.52(c) and 5.33(b), 5.33(c), 5.35, 5.32, and 5.31(b) to replace rules 5.35, 5.36, 5.37, 5.38, and 5.39, respectively, which are proposed for repeal. Due to the extensive modifications proposed in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The modifications are being made as a result of the agency's review

of Title 22, Chapter 5, Subchapter B as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

#### §5.35. Processing.

#### §5.36. Approval/Rejection.

#### §5.37. Continuance.

#### §5.38. Reciprocal Transfer.

#### §5.39. Education and Experience Equivalencies.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## 22 TAC §5.35

The Texas Board of Architectural Examiners proposes new §5.35 which sets forth conditions under which a properly submitted application will continue to be valid.

Due to the proposal of extensive modifications, publishing an amendment to the existing rule is less practical than the alternative of repealing the existing rule and publishing a new rule. The new rule is being proposed as a result of the agency's review of Title 22, Chapter 5, Subchapter B, as mandated by Article IX of the General Appropriations Act.

New §5.35 states that an application will remain valid for three years, after which the Board may require the applicant or candidate to update the application or reapply. It requires an applicant or candidate to pay an annual record maintenance fee or the application file will be closed. It also allows a closed application file

to be reopened during the five years following its closure as long as all unpaid record maintenance fees are paid.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, anticipates that there will be no measurable fiscal implications for state or local government for the first five years the section as proposed is in effect.

The public benefits expected as a result of the new rule are that it will be easier for persons affected by the rule's provisions to understand them and that applicants will have an additional two years during which they may reopen closed files.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to the performance of its duties.

These proposed sections do not affect any other statutes.

§5.35. Pending Applications.

(a) A properly submitted application for registration by examination will be effective for three years from the date it is received by the Board. After three years, the Board may require the Applicant or Candidate to update the application or reapply.

(b) Each Candidate approved for examination must pay an annual record maintenance fee as prescribed by the Board or the Candidate's application file will be closed. A Candidate may reopen an application file that was closed pursuant to this section only after payment of record maintenance fees for the current year and for each year the file has been closed. An application file that has been closed for five years or longer may not be reopened.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## SUBCHAPTER C. EXAMINATIONS

### 22 TAC §§5.51 - 5.60

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §5.51 pertaining to who is required to take the examination; §5.52 pertaining to when the examination may be taken; §5.53 pertaining to how the examination will be formatted; §5.54 pertaining to when, where, and how candidates must report for

the exam; §5.55 pertaining to the conditions which must be provided at the place where the examination is given; §5.56 pertaining to how scores will be reported to exam participants; §5.57 pertaining to how an individual may obtain printed subject matter pertaining to the examination; §5.58 pertaining to the conditions under which a candidate may retake individual divisions of the examination; §5.59 pertaining to the conditions under which passing scores may be exchanged with other NCIDQ member boards; and §5.60 pertaining to the conditions under which a candidate will be required to reapply to take the examination.

Simultaneously, the agency is proposing new rules with section numbers 5.51 through 5.54 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 5, Subchapter C as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§5.51. *Required.*

§5.52. *Schedules.*

§5.53. *Format.*

§5.54. *Reporting.*

§5.55. *Conditions.*

§5.56. *Scoring.*

§5.57. *Subject Matter.*

§5.58. *Reexamination.*

§5.59. *Transfer of Passing Scores.*

§5.60. *Reapplication.*

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

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TRD-200102292

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535

◆ ◆ ◆  
**22 TAC §§5.51 - 5.54**

The Texas Board of Architectural Examiners proposes new §5.51 which sets forth the general requirements for the National Council for Interior Design Qualification (NCIDQ) examination in Texas; new §5.52 pertaining to scoring procedures for the NCIDQ examination; new §5.53 relating to the timeframe within which the NCIDQ exam must be completed; and new §5.54 pertaining to transferring examination scores to other interior design registration boards and the conditions under which the Texas board will accept scores transferred from other boards.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 5, Subchapter C as mandated by Article IX of the General Appropriations Act. New §5.51 states that applicants must complete all sections of the NCIDQ Examination and requires that every applicant obtain approval from the Board to take the exam. The Board may approve an applicant only if the applicant has completed all of the educational requirements and at least six months of the experiential requirements. It also requires each candidate to achieve a passing score in every division of the exam. New §5.52 describes the examination administration process and requires applicants to apply for the exam as described in rule 5.33, requires the Board to administer the exam twice annually, establishes application deadlines, requires applicants to appear personally and provide identification at the time of the exam, and requires applicants to bring necessary tools to the exam. It requires the Board to provide an explanation of the scoring procedures to each candidate prior to examination. It stipulates that the scores be determined by the entity that administers the examination and prohibits the Board from reviewing the scores to determine validity. It relieves the Board of liability in the event a candidate takes a section(s) of the exam but fails to receive a score, instead authorizing the candidate to retake the section or sections with the corresponding fee waived. New §5.53 requires each candidate approved for examination after December 31, 2001, to pass all sections within five years after the approval date or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. It requires each candidate approved for examination by the Board prior to January 1, 2002, to pass all sections of the examination no later than December 31, 2006, or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again. New §5.54 makes it possible for a candidate's examination score to be transferred from one NCIDQ member board to another but allows a candidate to maintain only one active application at a time. It requires that a candidate whose examination score is transferred to Texas to satisfy all current requirements for interior design registration in Texas and to pass all sections of the examination no later than five years from the date the first examination section was passed or forfeit credit for each section passed and be required to submit a new registration application in order to obtain approval to take the examination again.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect, there will be no measurable fiscal implications for state or local government as a result of enforcing or administering the new sections.

The public benefits expected as a result of the new rules are that it will be easier for persons affected by the provisions of the rules to understand them and also that the limitation on opportunities for retaking the exam will better ensure that persons approved for registration possess the knowledge and skills necessary for competent professional practice.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to Section 8 and Section 5(d) of Article 249e, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules including rules related to the registration exam.

These proposed sections do not affect any other statutes.

§5.51. Requirements.

(a) Every Applicant for interior design registration by examination in Texas must successfully complete all sections of the National Council for Interior Design Qualification (NCIDQ) examination.

(b) An Applicant may take the NCIDQ examination at any official NCIDQ testing center but must satisfy all Texas registration requirements in order to obtain interior design registration by examination in Texas.

(c) The Board shall not approve an Applicant for examination unless the Applicant has completed the educational requirements and at least six (6) months of the experiential requirements for interior design registration in Texas.

(d) Each Candidate must achieve a passing score in each division of the NCIDQ examination. Scores from individual divisions may not be averaged to achieve a passing score.

§5.52. Examination Administration and Scoring.

(a) An Applicant must apply for interior design registration by examination as described in Section 5.33.

(b) The NCIDQ examination shall be administered twice annually.

(c) In order for an Applicant to sit for the spring administration of the NCIDQ examination, the Applicant's application and supporting documentation must be postmarked or received by the Board no later than December 1st of the preceding year. In order for an Applicant to sit for the fall administration of the NCIDQ examination, the Applicant's application and supporting documentation must be postmarked or received by the Board no later than June 1st. If the deadline falls on a date when the Board's office is closed, the application and supporting documentation must be postmarked or received by the Board no later than the next date when the Board's office is open.

(d) A Candidate who is approved to take the NCIDQ examination must appear personally for examination as directed in the notification letter sent to the Applicant. In order to be admitted for examination, the Candidate must present the candidate's identification card that was mailed to the Candidate prior to the examination date and must present a separate official form of identification bearing a recent photograph of the Candidate.

(e) Each Candidate shall be responsible for taking to the examination all tools necessary to complete the examination.



(f) An explanation of the scoring procedures for the NCIDQ examination shall be provided to each Candidate before the examination is administered to the Candidate.

(g) A Candidate's NCIDQ examination scores shall be determined by the entity that administers the examination. The Board shall not review any NCIDQ examination score to determine its validity.

(h) If, for any reason, a Candidate takes a section or sections of the NCIDQ examination but does not receive a score for the section or sections, the Board shall have no liability beyond authorizing the Candidate to retake the section or sections with the corresponding fee waived.

§5.53. Reexamination.

(a) Each Candidate who, after December 31, 2001, is approved for examination by the Board must pass all sections of the examination within five years after the date the Candidate is approved for examination by the Board. A Candidate approved for examination by the Board after December 31, 2001, who does not pass all sections of the examination within five years after approval will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

(b) Each Candidate approved for examination by the Board prior to January 1, 2002, must pass all sections of the examination no later than December 31, 2006. A Candidate approved for examination by the Board prior to January 1, 2002, who does not pass all sections of the examination by December 31, 2006, will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

§5.54. Transfer of Passing Scores.

(a) A Candidate's examination score may be transferred from one NCIDQ member board to another. The acceptance of the Candidate's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one jurisdiction at all times. In order to be approved for interior design registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all current requirements for interior design registration in Texas.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination no later than five years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within the five-year period, the Candidate will forfeit credit for each section of the examination passed and must submit a new registration application in order to obtain approval to take the examination again.

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §§5.71 - 5.82

*(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 Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Architectural Examiners proposes the repeal of §5.71 pertaining to who is eligible to receive a certificate of registration; §5.72 pertaining to conditions under which certificates of registration are issued; §5.73 pertaining to conditions under which a certificate of registration must be displayed; §5.74 pertaining to obtaining a replacement certificate of registration; §5.75 pertaining to conditions under which a certificate of registration must be surrendered; §5.76 pertaining to the requirement to register annually; §5.77 pertaining to how annual registration renewal notices will be provided; §5.78 pertaining to consequences of failing to register annually; §5.79 pertaining to how a registration which has been revoked may be reinstated; §5.80 pertaining to requirement to comply with requirements of the Texas Education Code, Section 57.491 regarding student loan repayment; §5.81 pertaining to eligibility for and restrictions on inactive status; and §5.82 pertaining to continuing education requirements for registration renewal.

Simultaneously, the agency is proposing new rules with section numbers 5.71 through 5.79 to replace the rules proposed for repeal. Due to the extensive modifications proposed in the new rules, amending the existing rules is less practical than repealing the existing rules and publishing new rules. The modifications are being made as a result of the agency's review of Title 22, Chapter 5, Subchapter D, as mandated by Article IX of the General Appropriations Act.

Cathy L. Hendricks, Executive Director, has determined that for each of the first five years the proposed repeal is in effect there are expected to be no fiscal implications for state or local government as a result of the repeal.

Ms. Hendricks has also determined that for each year of the first five years after the repeal, the public benefits anticipated as a result of the repeal will be that the Board will be administering new rules which more clearly define professional responsibilities and are more consistent with current industry standards.

The repeal is not expected to impact small business significantly.

No economic cost to persons affected by the repeal is expected as a result of the repeal.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The repeal is proposed pursuant to Section 5(d) of Article 249e, Vernon's Texas Civil Statutes, which provides the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties.

This proposed repeal does not affect any other statutes.

§5.71. *Certificates of Registration.*

§5.72. *Issuance and Description.*

§5.73. *Display of Certificate.*

§5.74. *Replacement Certificate.*

§5.75. *Surrender of Certificates.*

§5.76. *Annual Registration Required.*

§5.77. *Annual Registration Procedure.*

§5.78. *Failure to Register Annually.*

§5.79. *Reinstatement.*

§5.80. *Denial of Annual Renewal.*

§5.81. *Inactive Registration Status.*

§5.82. *Continuing Education Program Requirements.*

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

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8535



## 22 TAC §§5.71 - 5.79

The Texas Board of Architectural Examiners proposes new §5.71 which describes who is qualified to receive a certificate of registration and what information will be provided on the certificate; new §5.72 pertaining to where a certificate of registration must be displayed and how to acquire duplicate copies for display in multiple locations; new §5.73 relating to the conditions under which a registrant may obtain a replacement certificate of registration; new §5.74 pertaining to the conditions under which a certificate of registration must be surrendered to the Board; new §5.75 pertaining to when and how a certificate of registration must be renewed; new §5.76 pertaining to how a revoked certificate of registration may be reinstated; new §5.77 pertaining to the discontinuation of emeritus status and the options available to registrants who currently have an emeritus registration; new §5.78 pertaining to inactive status for certificates of registration, and new §5.79 pertaining to continuing education requirements that must be met in order for a registrant to renew a certificate of registration.

Due to the proposal of extensive modifications, publishing amendments to the existing rules is less practical than the alternative of repealing the existing sections and publishing new sections. The new rules are being proposed as a result of the agency's review of Title 22, Chapter 3, Subchapter D, as mandated by Article IX of the General Appropriations Act.

New §5.71 provides that certificates of registration be issued only to individuals who have satisfied the registration requirements and stipulates that each certificate of registration indicate the interior designer's name, registration number, and effective date of the registration and acknowledge the interior designer's right to practice interior design in Texas. New §5.72 requires an interior designer to display his/her certificate of registration at his/her place of practice and to display a duplicate certificate at each additional location. It provides a method for obtaining a duplicate certificate from the Board and prohibits an interior designer from copying his/her certificate of registration. New §5.73 provides a method for an interior designer whose certificate of registration has been damaged or misplaced to obtain a replacement certificate from the Board. New §5.74 sets forth the conditions under and by which a certificate of registration that has been suspended or revoked must be surrendered to the Board. New §5.75 requires that each certificate of registration be renewed annually upon payment of an annual renewal fee. It requires the Board to send annual registration renewal notices to each interior designer's most current address of record with instructions and deadlines for remitting a completed registration renewal form

and the prescribed fee. It requires an interior designer to notify the Board in writing of each change of address. It requires the Board to impose a late payment penalty if the renewal form and fee are not received on or before the expiration date. It stipulates that the Board may not renew the interior designer's certificate of registration if it receives official notice that he or she has defaulted on the repayment of a guaranteed student loan or has failed to pay court ordered child support. If a certificate of registration is not renewed within one year of the expiration date, the Board may take action to revoke it. New §5.76 provides that a revoked registration may be reinstated after an application for reinstatement has been submitted and approved and the reinstatement fee paid. It sets forth that reinstatement may be denied if the certificate of registration has been revoked for a continuous period of five years or longer or the reinstatement applicant has committed any act that could serve as the basis for the rejection of an application for registration or for the revocation of a certificate of registration; it also provides methods for reinstatement if the registration certificate has been revoked for a continuous period of five years or longer. New §5.77 provides that emeritus status be discontinued effective September 1, 2001, and that every interior designer who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the interior designer's next registration expiration date and waives the status change fee for emeritus interior designers who transfer to active or inactive status. New §5.78 provides an inactive registration status for interior designers, prohibits inactive registrants from practicing interior design and from using any form of the title "interior designer" to describe themselves or their work, and provides for the suspension or revocation of the registration and/or for a fine of up to \$1,000 for each day that an inactive registrant has practiced interior design or used a form of the title "interior designer" improperly. It prohibits an inactive registrant from using or displaying his/her interior design seal, registration certificate, or pocket card. It requires an inactive registrant to pay an annual record maintenance. It sets forth the procedures for returning an inactive registration to an active status. It requires an inactive registrant whose registration has been inactive for five years or longer to successfully complete all sections of the current registration examination before returning to active status or furnish evidence that the inactive registrant currently holds an interior designer registration in another jurisdiction with registration requirements that are substantially equivalent to Texas requirements. It sets forth the reasons for rejecting an application to return to active status. New §5.79 requires each interior designer to complete a minimum number of continuing education hours during each annual registration period. It defines what constitutes a continuing education hour and describes what activities will and will not be creditable. It sets forth the conditions under which exemptions from the continuing education requirements may be granted. It requires the interior designer to indicate compliance with the continuing education requirements on his or her annual registration renewal form. It requires each interior designer to maintain a record and proof of fulfillment of the requirements and it specifies the period of time the annual record shall be maintained. It allows the Board to require an interior designer to produce documentation to prove compliance with the continuing education requirements and sets forth a method for doing so. It sets forth the consequences for failing to comply with the continuing education requirements and for reporting false information. It allows an interior designer who completes a continuing education activity that is directly related to more than one of the professions regulated by the Board to receive credit for all of the professions to which it directly relates.

Cathy L. Hendricks, Executive Director, anticipates that for each of the first five years the proposed sections are in effect the fiscal implications for state or local government as a result of enforcing or administering the new sections might include a slight increase in revenue from interior designers who currently hold emeritus status and wish to switch to active status. This slight increase should be offset by costs related to enforcement of the new emeritus rule.

The public benefits expected as a result of the new rules are that persons affected by the provisions of the rules will be better able to understand and follow them and also that the confusion surrounding emeritus status will be eliminated.

There is expected to be no measurable impact on small business.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new sections are proposed pursuant to Section 5(d), Section 8, Section 9, Section 13A, and Section 14 of Article 249e, Vernon's Texas Civil Statutes which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to certificates of registration, annual renewal, inactive status, and continuing education.

These proposed sections do not affect any other statutes.

#### §5.71. Issuance of Certificates of Registration.

(a) Certificates of registration shall be issued to individuals who have satisfied the registration requirements as described in the Interior Designers' Registration Law and the Rules and Regulations of the Board.

(b) Each certificate of registration issued by the Board shall identify the Interior Designer by name and registration number, indicate the effective date of the registration, and acknowledge the Interior Designer's right to practice as a licensed Interior Designer in Texas.

#### §5.72. Display of Certificate.

(a) Each Interior Designer holding an active certificate of registration shall display it at his/her place of practice. If an Interior Designer maintains an office in more than one location, the Interior Designer shall display a duplicate certificate at each additional location.

(b) A duplicate certificate may be obtained only by filing with the Board an application for a duplicate certificate and paying a fee as prescribed by the Board. An Interior Designer may not copy his/her certificate of registration in order to display it.

#### §5.73. Replacement of Certificate.

If an Interior Designer's certificate of registration is lost or destroyed and the Interior Designer's registration is current and in good standing, the Interior Designer may obtain a replacement certificate by:

(1) submitting a written explanation regarding the loss or destruction of the certificate which requests a replacement certificate; and

(2) paying the fee prescribed by the Board for the replacement of a certificate of registration.

#### §5.74. Surrender of Certificate.

Upon receipt of written notice from the Board requiring the surrender of a certificate of registration that has been suspended or revoked, an Interior Designer or former Interior Designer shall immediately surrender his/her certificate of registration in the manner prescribed in the notice.

#### §5.75. Annual Renewal Procedure.

(a) Each certificate of registration must be renewed annually on or before the specified expiration date of the certificate of registration.

(b) Each Interior Designer must pay an annual registration renewal fee as prescribed by the Board to renew his/her certificate of registration.

(c) The Board shall send annual registration renewal notices to each Interior Designer at the Interior Designer's most current address of record. Instructions and deadlines for remitting a completed registration renewal form and the prescribed fee will appear on each notice. An Interior Designer must notify the Board in writing each time the Interior Designer's address of record changes.

(d) If an Interior Designer fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Interior Designer's certificate of registration, the Board shall impose a late payment penalty that must be paid before the Interior Designer's certificate of registration may be renewed.

(e) If the Board receives official notice that an Interior Designer has defaulted on the repayment of a guaranteed student loan, the Board may not renew the Interior Designer's certificate of registration unless:

(1) the Interior Designer presents to the Board a certificate from the Texas Guaranteed Student Loan Corporation certifying that the Interior Designer has entered into a repayment agreement for the defaulted loan; or

(2) the renewal is the first renewal following the Board's receipt of official notice regarding the default.

(f) If the Board receives official notice that an Interior Designer has failed to pay court ordered child support, the Board may be prohibited from renewing the Interior Designer's certificate of registration.

(g) If a certificate of registration is not renewed within one year of the specified registration expiration date, the Board may take formal action to revoke the certificate of registration.

#### §5.76. Reinstatement.

(a) Once the revocation, cancellation, or surrender of an Interior Designer's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid.

(b) An application for reinstatement may be denied on the following grounds:

(1) the certificate of registration has been revoked for a continuous period of five years or longer; or

(2) the reinstatement Applicant has committed any act that could serve as the basis for the rejection of an application for registration or for the revocation of a certificate of registration.

(c) If a certificate of registration has been revoked for a continuous period of five years or longer, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an interior design registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas interior design registration requirements.

§5.77. Emeritus Status.

Effective September 1, 2001, an Interior Designer may not request or continue an emeritus interior design registration. Every Interior Designer who holds an emeritus registration on September 1, 2001, must transfer to active or inactive status on or before the Interior Designer's next registration expiration date in order to continue to hold a valid certificate of registration. The status change fee will be waived for each emeritus Interior Designer who transfers to active or inactive status.

§5.78. Inactive Status.

(a) An Interior Designer whose registration is active and in good standing may apply for inactive registration status on a form prescribed by the Board before the expiration date of the registration.

(b) An inactive registrant may not practice interior design or use the title "interior designer" to describe the registrant or the term "interior design" to describe the registrant's work. If an inactive registrant practices interior design or uses the title "interior designer" or the term "interior design" improperly, the inactive registrant's registration may be suspended or revoked or the inactive registrant may be fined up to \$ 1,000 for each day that the inactive registrant has practiced interior design or used the title "interior designer" or the term "interior design" improperly.

(c) An inactive registrant shall not use or display his/her interior design seal, registration certificate, or pocket card during any period that his/her registration is inactive.

(d) An inactive registrant shall pay an annual record maintenance fee as prescribed by the Board.

(e) In order to return his/her registration to active status, an inactive registrant must:

- (1) apply on a form prescribed by the Board;
- (2) complete all continuing education requirements for each year the registration was inactive; and
- (3) pay a fee as prescribed by the Board.

(f) An inactive registrant whose registration has been inactive for a continuous period of five years or longer must do the following before the inactive registrant may return to active status:

- (1) successfully complete all sections of the current registration examination during the five years immediately preceding return to active status; or
- (2) furnish evidence that the inactive registrant currently holds an interior design registration in another jurisdiction where the registration requirements are substantially equivalent to Texas interior design registration requirements and that the current interior design registration is active and in good standing.

(g) Applications to return to active status may be rejected for any of the reasons that an initial application for registration may be rejected or that a registration may be revoked.

(h) The Board may require that applications to return to active status include verification that the Applicant has complied with the laws governing the registration of interior designers.

§5.79. Continuing Education Requirements.

(a) Each Interior Designer shall complete a minimum of eight (8) continuing education program hours (CEPH) during each annual registration period. One CEPH shall represent a minimum of 50 minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(1) Interior Designers shall complete a minimum of five (5) CEPH in structured course study. Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the National Council for Interior Design Qualification. No credit shall be awarded for the same structured course for which the Interior Designer has claimed credit during the preceding three (3) years.

(2) Interior Designers may complete a maximum of three (3) CEPH in self-directed study. One (1) CEPH shall represent one (1) hour of self-directed study. Self-directed study must utilize articles, monographs, or other study materials that the Interior Designer has not previously utilized for self-directed study.

(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional interior design subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.

(c) The Board has final authority to determine whether to award or deny credit claimed by an Interior Designer for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses or seminars dealing with technical interior design subjects sponsored by colleges or universities;

(2) Attendance at technical presentations or workshops on interior design subjects which are held in conjunction with conventions or seminars and are related to materials use and function;

(3) Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;

(4) Three (3) CEPH may be claimed per class hour spent teaching interior design courses or seminars as long as the Interior Designer has not previously claimed credit for teaching the same course. College or university faculty may not claim credit for teaching.

(5) Hours spent in professional service to the general public which draws upon the Interior Designer's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(6) Hours spent in interior design research which is published or formally presented to the profession or public during the annual registration period;

(7) Hours spent in interior design self-directed study programs such as those organized or sponsored by the American Association for Interior Design, the International Interior Design Association, the National Council for Interior Design Education and Research, or similar organizations acceptable to the Board.

(8) College or university credit courses dealing with interior design subjects or ethical business practices; each semester credit hour shall equal one (1) CEPH; each quarter credit hour shall equal one (1) CEPH;

(9) One (1) CEPH may be claimed for attendance at one (1) full-day session of a meeting of the Texas Board of Architectural Examiners; an Interior Designer must attend the entire full-day session in order to receive credit.

(d) An Interior Designer may be exempt from the continuing education requirements described in this subchapter for any of the following reasons:

(1) An Interior Designer who is a first-time new Interior Designer by examination or first-time Interior Designer by reciprocity shall be exempt for his/her initial registration period, which shall not exceed one year;

(2) An emeritus Interior Designer shall be exempt for any registration period during which the Interior Designer's registration is in Emeritus Status;

(3) An inactive registrant shall be exempt for any registration period during which the registrant's registration is in inactive status, but all continuing education credits for each period of inactive registration shall be completed before the inactive registrant's registration may be returned to active status;

(4) An Interior Designer who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Interior Designer serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days;

(5) An Interior Designer who has an active registration in another jurisdiction that has registration requirements which are substantially similar to Texas registration requirements and that has a mandatory continuing education program shall be exempt for any registration period during which the Interior Designer satisfies such other jurisdiction's continuing education program requirements; or

(6) An Interior Designer who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in Section 61.003, Education Code, and who in such position is engaged in teaching interior design.

(e) When renewing his/her annual registration, each Interior Designer shall sign the statement on the renewal form attesting to the Interior Designer's fulfillment of the mandatory continuing education program requirements during the preceding registration period. A maximum of eight (8) CEPH may be carried from one registration period to the next.

(1) A detailed record of the Interior Designer's continuing education activities shall be recorded annually. Each Interior Designer shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of three years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require an Interior Designer to produce documentation to prove that the Interior Designer has complied with the mandatory continuing education program requirements. The Interior Designer shall be required to produce the documentation in the manner prescribed in the Board's written request. If acceptable documentation is not provided within thirty (30) days of request, claimed credit may be disallowed. The Interior Designer shall have 180 calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(f) Failure to fulfill the annual continuing education program requirements may result in disciplinary action by the Board.

(g) Any Interior Designer who is found to have reported false information regarding the Interior Designer's continuing education activities may be subject to disciplinary action by the Board.

(h) If an Interior Designer is registered to practice more than one of the professions regulated by the Board and the Interior Designer completes a continuing education activity that is directly related to more than one of the professions regulated by the Board, the Interior

Designer may submit that activity for credit for all of the professions to which it directly relates. The Interior Designer must maintain a separate detailed record of continuing education activities for each profession.

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

Filed with the Office of the Secretary of State, on April 20, 2001.

TRD-200102293

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-8535



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER Q. ASSIGNMENT AND USE OF AGENCY VEHICLES**

##### **28 TAC §§1.1901 - 1.1904**

The Texas Department of Insurance (Department) proposes new §§1.1901 - 1.1904 concerning department vehicles. These new sections are necessary to establish the procedures relating to the assignment and use of department vehicles in accordance with House Bill 3125, 76th Legislature, which added Section 2171.1045 to the Texas Government Code. The statute requires state agencies to adopt rules consistent with the State Vehicle Fleet Management Plan (Plan). The General Services Commission's Office of Vehicle Fleet Management, with direction from the State Council on Competitive Government, developed the Plan and made recommendations for improving the administration and operation of the state's vehicle fleet. The General Services Commission adopted the Plan on October 11, 2000.

Section 2171.1045 of the Government Code requires that each state agency adopt rules regarding the assignment and use of the agency's vehicles. The rules must be consistent with the Plan adopted under Section 2171.1045. The statute provides that the rules must require that (1) vehicles be assigned to the department's motor pool and be available for checkout and (2) the department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the department.

Proposed §1.1901 states that the purpose of the subchapter is to implement the provisions of Section 2171.1045 of the Government Code. Proposed §1.1902 provides that department vehicles are assigned to the department motor pool and may be available for checkout. Proposed §1.1903 states that the department may assign a vehicle to an individual administrative or executive employee on a regular basis if there is a written finding by the department that the assignment is critical to the needs and mission of the department. Proposed §1.1904 provides that the department may identify and request a waiver or exemption

from provisions of the State Vehicle Management Plan based on conditions specific to the department to promote fiscal efficiency and good business practices.

Karen Phillips, Chief Financial Officer, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Phillips has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be the enactment of vehicle fleet management rules and policies to conform to the Office of Fleet Vehicle Management's State Vehicle Fleet Management Plan. Because the rules would affect TDI only, there is no probable economic cost to persons required to comply with the sections and no economic costs on micro, small, and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 4, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Creston Brazzil, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed under the Government Code §2171.1045 and Insurance Code §36.001. Section 2171.1045 provides that each state agency shall adopt rules, consistent with the management plan, relating to the assignment and use of the agency's vehicles. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following articles are affected by this proposal: Texas Government Code §2171.1045

§1.1901. Purpose.

This subchapter sets out the process for the assignment and use of the department's vehicles. This subchapter implements the provisions of §2171.1045 of the Texas Government Code and is consistent with the State Vehicle Fleet Management Plan as adopted by the Office of Vehicle Fleet Management of the General Services Commission.

§1.1902. Use of Department Vehicles.

All vehicles, with the exception of vehicles assigned to field employees, are assigned to the department motor pool and may be available for checkout as needed for state business. Because of the department's organizational structure, some pool vehicles may be maintained at remote or field locations.

§1.1903. Assignment of Department Vehicles.

The department may assign a vehicle to an individual administrative or executive employee on a regular or daily basis only if there is a written documentation by the department that the assignment is critical to the needs and mission of the department.

§1.1904. Waiver or Exemption.

The department will cooperate with the General Services Commission to identify, request and, if appropriate, use any waiver or exemption provision in the State Vehicle Management Plan based on conditions

specific to the department in the interest of promoting fiscal efficiency and good business practices.

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

Filed with the Office of the Secretary of State, on April 18, 2001.

TRD-200102215

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 463-6327

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION**

**CHAPTER 106. PERMITS BY RULE**

The Texas Natural Resource Conservation Commission (commission) proposes new §106.8, Recordkeeping; and §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities; amendments to §106.181, Small Boilers, Heaters, and Other Combustion Devices; §106.355, Pipeline Metering, Purging, and Maintenance; §106.454, Degreasing Units; and the repeal of §106.263, Repairs and Maintenance. The proposed new §106.8 would be placed in Chapter 106, Subchapter A, General Requirements. Subchapter A would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS  
FOR THE PROPOSED RULES**

The proposed new §106.8 would specify recordkeeping requirements for Chapter 106, Permits by Rule. While considering the implementation of Senate Bill 766 in 2000, the commission received comments from the EPA stating that Chapter 106 should include requirements that a source operating under a permit by rule (PBR) be able to continuously demonstrate compliance with the general requirements for use of a PBR and the specific conditions of the individual PBR under which the source is authorized. Because of these developments and in order to ensure enforceable limits on potential to emit for insignificant facilities, the commission examined its recordkeeping requirements under Chapter 106 and is proposing amendments.

There are two distinct types of PBRs. Many PBRs only list the type of facility and state that it is permitted by rule and have no restrictions other than the general restrictions applicable to all PBRs as contained in §106.4, Requirements for Permitting by Rule. These "one-liners" have no recordkeeping requirements imposed by this proposal. Other PBRs have specific conditions and may or may not individually require recordkeeping.

Those who claim a PBR should be aware of their compliance status and should have records to demonstrate compliance with the emission limitations and conditions available at the time of an investigation. The commission believes that recordkeeping requirements should be kept to a minimum and avoid duplication.

The proposed recordkeeping requirements will be described in detail in the SECTION BY SECTION DISCUSSION, but generally the recordkeeping requirements will be proposed as follows. Facilities authorized under the one-liners will not have new recordkeeping requirements imposed under this proposal. While these facilities are expected to comply with the general restrictions in §106.4, the commission expects that verification of compliance would be intuitively obvious on inspection or could be demonstrated by records otherwise kept for business purposes. Facilities currently required to keep records under a specific PBR would generally be affected only by the record retention requirements of this proposal. Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. It is expected that these facilities should be able to meet the proposed recordkeeping requirements with records kept for normal business purposes such as material use and purchase records.

The second major concept of this proposal concerns the authorization of routine maintenance, start-up, and shutdown emissions under a PBR. Under the current version of §106.263, Repairs and Maintenance, a significant amount of emissions (more than one occurrence of up to 25 tons) may be authorized. This is not consistent with the maintenance reporting and exemption requirements in §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements and §101.11, Exemptions from Rules and Regulations. Under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.057, the commission may exempt from permitting certain changes at facilities that will not make a significant contribution of air contaminants to the atmosphere. This proposal would limit the emissions from multiple maintenance, start-up, and shutdown occurrences, as well as from facility operations associated with maintenance activities, by requiring cumulative accounting of emissions on an annual basis to ensure that the emissions are insignificant. This proposal would also limit the use of §106.263 to maintenance, start-up or shutdown activities that result in emissions below the reportable quantity (RQ) as defined in §101.1(82), Definitions. Maintenance, start-up, or shutdown emissions at or above the RQ must either be reported under §101.7 or incorporated into the facility's permit. Other amendments to this chapter are intended to clarify applicability for temporary maintenance facilities.

The proposed amendments to §106.181 would authorize the use of used oil for fuel in small boilers and heaters. The proposed amendments to §106.355 would clarify the authorization of air emissions for certain pipeline construction and operation and establish the relation of the section to the Chapter 101, general air quality rules on maintenance. The proposed amendment to §106.454 would clarify the intended requirements for remote reservoir degreasers.

## SECTION BY SECTION DISCUSSION

### *Subchapter A: General Requirements*

The proposed new §106.8 would specify requirements for recordkeeping and compliance demonstrations for all PBRs claimed. The creation and retention of appropriate records showing continuing compliance with PBR requirements has always been a responsibility of the facility owner or operator in order to operate under a PBR. The new section would specify the types of records that would be required to demonstrate compliance with the general conditions of §106.4 and the condition of the individual PBR claimed. This new section will

affect all PBR claims, regardless of the date when the owner or operator began using the PBR.

Proposed new §106.8(a) would state that owners or operators of facilities operating under de minimis status as defined in §116.119, De Minimis Facilities or Sources, are not affected by this rule because no authorization is required. The commission does not require records for de minimis sources.

The proposed new section also outlines the requirements for two types of PBRs in §106.8(b) and (c), those referred to as "one-liners" (including all of Chapter 106, Subchapter C, Domestic and Comfort Heating and Cooling) and those which have specific conditions, respectively. One-liners are those PBRs which only name the type of facility, designate it as permitted by rule, and impose no other conditions in the PBR itself. Owners or operators of facilities authorized by one-liners would not be required to maintain ongoing compliance records but only collect and present information when individually requested by the executive director. Compliance with all historical PBRs which meet the one-liner criteria would be verified in the same way. The claimant would only need to provide information, such as business records, to demonstrate compliance with §106.4. All historical PBRs can be found on the commission's website.

The commission has determined the following current sections of Chapter 106 meet the one-liner criteria and are referenced as Exhibit A: 1) Subchapter C, Domestic and Comfort Heating and Cooling; §106.101, Domestic Use Facilities; §106.102, Comfort Heating; and §106.103, Air Conditioning and Ventilation Systems; 2) Subchapter D, Analysis and Testing; §106.121, Hydraulic and Hydrostatic Testing Equipment; §106.122, Bench Scale Laboratory Equipment; §106.123, Vacuum-producing Devices for Laboratory Use; 3) Subchapter F, Animal Confinement; §106.163, Race Tracks, Zoos, and Animal Shelters; 4) Subchapter I, Manufacturing; §106.228, Platen Presses for Laminating; §106.229, Textile Dyeing and Stripping Equipment; 5) Subchapter J, Food Preparation and Processing; §106.242, Food Preparation; §106.244, Ovens, Barbecue Pits, and Cookers; 6) Subchapter K, General; §106.265, Hand-held and Manually Operated Machines; §106.266, Vacuum Cleaning Systems; 7) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.282, Feed Grinding Facilities; Division 2, Fiber, §106.291, Cotton Gin Stands; Division 3, Fertilizer, §106.301, Aqueous Fertilizer Storage; 8) Subchapter M, Metallurgy; §106.312, Wax Melting and Application; §106.314, Shell Core and Mold Machines; §106.316, Metal Inspection; §106.317, Miscellaneous Metal Equipment; §106.318, Die Casting Machines; 9) Subchapter N, Mixers, Blenders, and Packaging; §106.331, Cosmetics Packaging and Pharmaceutical Packaging and Coating; 10) Subchapter Q, Plastics and Rubber; §106.391, Rubber and Plastic Curing Presses; §106.394, Plastic Compression and Injection Molding; 11) Subchapter R, Service Industries; §106.411, Steam or Dry Cleaning Equipment; §106.412, Fuel Dispensing; §106.413, Bond Lining to Brake Shoes; §106.414, Packaging Lubricants and Greases; §106.415, Laundry Dryers; §106.419, Photographic Process Equipment; 12) Subchapter S, Surface Coating; §106.431, Milling and Grinding of Coatings and Molding Compounds; §106.434, Powder Coating Facility; 13) Subchapter T, Surface Preparation; §106.451, Wet Blast Cleaning; 14) Subchapter U, Tanks, Storage, and Loading; §106.471, Storage or Holding of Dry Natural Gas; and 15) Subchapter X, Waste Processing and Remediation; §106.531, Sewage Treatment Facility.

Owners or operators of all other facilities which are constructed, modified, or operated under a PBR would be required to maintain records to demonstrate that the facility meets the conditions of §106.4 and the applicable PBR conditions. The form and content of these records would be specified in proposed new §106.8(c)(1) - (5).

Proposed new §106.8(c)(1) would require that the owner or operator of a facility permanently retain a copy of the PBR and general requirements that authorized the facility's construction or changes. The PBR and general requirements of Chapter 106 (previously §116.211, Standard Exemption List) in effect at the time of the original authorization have historically remained in effect as long as the facility is in existence and is not reconstructed or changed. By keeping a copy of the PBR and general requirements in effect, both the commission and the claimant understand any conditions and restrictions which may apply to the facility. The commission maintains historical and current copies of all PBRs and general requirements on its web site to assist the regulated community in finding the appropriate claim. Copies are available at [http://tnrcc.state.tx.us/air/nsr\\_permits/exempt.htm](http://tnrcc.state.tx.us/air/nsr_permits/exempt.htm) or by contacting the executive director. These historical files also help the regulated community and commission staff in those cases where the actual construction or installation date cannot be determined. In those cases, the commission would accept a demonstration of compliance with a PBR and general requirements in effect when a clear record of the existence of the facility has been established. The claimant could also choose to demonstrate compliance with any PBR and general requirements in effect after the date a facility was shown to be in existence.

Proposed new §106.8(c)(2) would require claimants to keep sufficient information to demonstrate that the facility meets the requirements of §106.4 or the general conditions in effect at the time of construction or change and meets all the conditions and requirements of the specific PBR claimed including, but not limited to, air contaminant emission type and quantities, equipment or operational specifications, and emission abatement limitations. The information and data would have to be sufficient to demonstrate compliance with all applicable requirements of §106.4. PBRs may contain conditions to ensure emissions from facilities are insignificant in accordance with TCAA, §382.057, Exemption, and §382.05196, Permits by Rule.

Detailed emission calculations are not necessary for demonstrating compliance with all PBRs; therefore, proposed new §106.8 would not require emission calculations for all PBR holders. Records of some operating parameters are sufficient to demonstrate compliance with most PBRs. All PBR holders are encouraged to use records they currently keep (production records, purchase records, etc.) to demonstrate compliance with the emission limitations. Recordkeeping frequency would vary depending upon the specific characteristics of a given facility. Records of applicable operating parameters or emission calculations, whichever is being used, would have to be summarized as often as needed (if at all) to ensure that the owner or operator is aware of and can demonstrate they are within the emission limitations. The limits are expressed in terms of a rolling 12-month basis. PBR holders would have to factor the 12-month rolling basis into their recordkeeping procedures.

In some cases, the only required calculation would be a one-time calculation to demonstrate a facility is incapable of exceeding the limitations. In this case, the PBR holder would be aware of

their compliance status at all times by virtue of the one-time calculation. No monthly or yearly summary would be needed. In other cases, the PBR holder may be able to determine operating limits, such as the total number of operating hours per month and/or production rates that will ensure the facility remains below the emission limits. The owners or operators of these facilities would only need to summarize the relevant operating parameter on a monthly basis. Owners or operators of facilities with more variable operations, such as a batch operation with varying emission rates and operating hours, might need to calculate their emissions on a regular basis.

A PI-7 Permit by Rule Registration Form, with required documentation, and a Permit by Rule General Requirements Checklist could be used by claimants to demonstrate initial compliance with this proposed section.

Other records that would be required under the proposed new §106.8(c)(2) may include information regarding public notice where a site or commission account has more than one facility authorized under a PBR and the combined emissions of these facilities exceed the limitations of §106.4(a)(4). In addition, a record of the date of construction or modification of the PBR facility would demonstrate compliance with §106.4(a)(5). Conditions which cannot change, such as distances from permanently affixed facilities to any property line at the time of construction, or ambient operating temperatures with no external, reaction, or raw material heating source, would not need to be recorded. However, where equipment could be moved with relative ease, new offsite receptors could be built, or external heat sources are on site, pictorial records (construction drawings, photographs, temperature readings) might be appropriate.

Since mechanisms and documents to address limitations, conditions, and emission requirements vary widely based on the level of detail in each PBR, the commission intends to provide guidance by developing and expanding checklists for all current PBRs. These checklists are intended for use by the commission and facility operators. Operators may also receive compliance assistance from the commission's small business and local government assistance representatives. Checklists and guidance documents would be posted on the commission's web site. These checklists would assist the commission and claimants in identifying which types of records might be used for compliance with the proposed new §106.8(c)(2). To minimize duplication and unnecessary paperwork, the commission will focus on records which may already be maintained by claimants for other business reasons. The type of records generally envisioned include, but are not limited to, production records, operating hours, material purchase or usage notations, and/or emissions calculations. For example, compliance with the emission limits of sulfur dioxide from a boiler firing natural gas could be demonstrated by records of the sulfur content in the fuel gas (provided by the supplier) and the volume of gas fired in the boiler (purchase receipts). Another example would be a surface coating operation under §106.454 which currently requires extensive materials and usage records to be created and summarized over various periods of time.

The commission reviewed all PBRs to determine which claimants would most likely be affected by the requirements of the proposed new §106.8(c)(2). Three distinct categories of current PBRs have been identified by the commission: 1) PBRs which have neither specific conditions nor recordkeeping requirements (referred to as one-liners in Exhibit A); 2) PBRs which contain specific recordkeeping requirements (Exhibit B); and 3) PBRs which contain specific emission,



operational, or abatement conditions but no recordkeeping requirements (Exhibit C). Numerous PBRs currently contain recordkeeping requirements, and these operators would be moderately affected by the requirement to demonstrate their compliance with §106.4. In many cases, claimants using these PBRs would only have to retain the records that the individual PBR requires. These PBRs include the following and are referenced as Exhibit B: 1) Subchapter G, Combustion; §106.183, Boilers, Heaters, and Other Combustion Devices; 2) Subchapter I, Manufacturing; §106.224, Aerospace Equipment and Parts Manufacturing; §106.225, Semiconductor Manufacturing; §106.226, Paints, Varnishes, Ink, and Other Coating Manufacturing; and §106.231, Manufacturing, Refinishing, and Restoring Wood Products; 3) Subchapter K, General; §106.261, Facilities (Emission Limitations); §106.263, Repairs and Maintenance; 4) Subchapter O, Oil and Gas; §106.355, Metering, Purging, and Maintenance of Pipelines; 5) Subchapter P, Plant Operations; §106.375, Aqueous Solutions for Electrolytic and Electroless Processes; 6) Subchapter Q, Plastics and Rubber; §106.392, Thermoset Resin Facilities; 7) Subchapter R, Service Industries; §106.417, Ethylene Oxide Sterilizers; §106.418, Printing Presses; 8) Subchapter S, Surface Coating; §106.433, Surface Coat Facility; §106.436, Auto Body Refinishing Facility; 9) Subchapter T, Surface Preparation; §106.452, Dry Abrasive Cleaning; §106.454, Degreasing Units; 10) Subchapter V, Thermal Control Devices; §106.493, Direct Flame Incinerators; §106.494, Pathological Waste Incinerators; and §106.496, Trench Burners; 11) Subchapter W, Turbines and Engines; §106.512, Stationary Engines and Turbines; and 12) Subchapter X, Waste Processes and Remediation; §106.533, Water and Soil Remediation.

For owners or operators of facilities authorized by PBRs listed in Exhibit B, proposed new §106.8 would require them to retain records for five years and to be able to demonstrate compliance with the limits of §106.4 on a rolling 12-month basis. In most cases, the types of records that are already required by the PBR would satisfy the requirements of proposed new §106.8.

Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. Under proposed new §106.8(c)(2), owners or operators of these facilities would be required to create operational records to demonstrate compliance with individual PBR conditions, as well as the general limitations of §106.4. These PBRs include the following and are referenced as Exhibit C: 1) Subchapter D, Analysis and Testing; §106.124, Pilot Plants; 2) Subchapter E, Aggregate and Pavement; §106.141, Batch Mixers; §106.142, Rock Crushers; §106.143, Wet Sand and Gravel Production; §106.144, Bulk Mineral Handling; §106.145, Bulk Sand Handling; §106.146, Soil Stabilization Plants; §106.147, Asphalt Concrete Plants; §106.148, Material Unloading; §106.149, Sand and Gravel Processing; §106.150, Asphalt Silos; 3) Subchapter F, Animal Confinement; §106.161, Animal Feeding Operations; §106.162, Livestock Auction Facilities; 4) Subchapter G, Combustion; §106.181, Small Boilers, Heaters, and Other Combustion Devices; §106.182, Ceramic Kilns; 5) Subchapter I, Manufacturing; §106.221, Extrusion Presses; §106.223, Saw Mills; §106.227, Soldering, Brazing, Welding; 6) Subchapter J, Food Preparation and Processing; §106.241, Slaughterhouses; §106.243, Smokehouses; §106.245, Ethyl Alcohol Facilities; 7) Subchapter K, General; §106.262, Facilities (Emission and Distance Limitations) (Previously SE 118); §106.264, Replacements of Facilities; 8) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.281, Feed Milling;

§106.283, Grain Handling, Storage, and Drying; Division 3, Fertilizer, §106.302, Portable Pipe Reactor; 9) Subchapter M, Metallurgy; §106.311, Crucible or Pot Furnace; §106.313, Tumblers for Cleaning or Deburring Metal; §106.315, Sand or Investment Molds; §106.317, Miscellaneous Metal Equipment; §106.319, Foundry Sand Mold Forming Equipment; §106.320, Miscellaneous Metallic Treatment; §106.321, Metal Melting and Holding Furnaces; §106.322, Furnaces To Reclaim Aluminum or Copper; 10) Subchapter N, Mixers, Blenders, and Packaging; §106.332, Chlorine Repackaging; §106.333, Water-based Adhesive Mixers; 11) Subchapter O, Oil and Gas; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.353, Temporary Oil and Gas Facilities; §106.354, Iron Sponge Gas Treating Unit; 12) Subchapter P, Plant Operations; §106.371, Cooling Water Units; §106.372, Industrial Gases; §106.373, Refrigeration Systems; §106.374, Lime Slaking Facilities; §106.376, Decorative Chrome Plating; 13) Subchapter Q, Plastics and Rubber; §106.393, Conveyance and Storage of Plastic and Rubber Material; §106.395, Equipment for Mixing Plastic and Rubber (No Solvent); §106.396, Equipment for Mixing Plastic and Rubber (With Solvent); 14) Subchapter R, Service Industries; §106.416, Uranium Recovery Facilities; 15) Subchapter S, Surface Coating; §106.432, Dipping Tanks and Containers; 16) Subchapter T, Surface Preparation; §106.453, Washing and Drying of Glass and Metal (Previously SE 42); 17) Subchapter U, Tanks, Storage, and Loading; §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.473, Organic Liquid Loading and Unloading; §106.474, Hydrochloric Acid Storage; §106.475, Pressurized Tanks or Tanks Vented to a Firebox; §106.476, Pressurized Tanks or Tanks Vented to Control; §106.477, Anhydrous Ammonia Storage; §106.478, Storage Tank and Change of Service; 18) Subchapter V, Thermal Control Devices; §106.491, Dual Chamber Incinerators; §106.492, Flares; §106.495, Heat Cleaning Devices; 19) Subchapter W, Turbines and Engines; §106.511, Portable and Emergency Engines and Turbines; and 20) Subchapter X, Waste Processing and Remediation; §106.532, Water and Wastewater Treatment; §106.534, Municipal Solid Waste Landfills and Transfer Stations.

For owners or operators of facilities authorized by PBRs listed in Exhibit C, proposed new §106.8 would require them to keep records related to emissions, to retain records for five years, and to be able to demonstrate compliance with the limits of §106.4 on a rolling 12-month basis.

Proposed new §106.8(c)(3) would require that owners or operators maintain records at the facility site unless the facility normally operates unattended, in which case the records must be maintained at the location within the state which controls operations of the facility.

Proposed new §106.8(c)(4) would require that records be made available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction. This implies no requirement as to the type of media on which the records are retained, and the commission expects that a combination of computer files, strip charts, graphs, drawings, pictures, operator logs, and other paper files (calculations, raw data, assumptions, and summaries) would be used. The commission may require that these records be duplicated when necessary at the facility owner or operator's expense and submitted to the commission upon request. In cases where records are maintained at a location other than the facility, the commission may require that the records be delivered or mailed at operator's expense to a designated location.

Proposed new §106.8(c)(5) would require that owners or operators of facilities authorized by PBR begin keeping records as required under proposed new §106.8(c)(2) on January 1, 2002. As with all air permits and authorizations issued by the commission, annual emission limits would have to be met on a rolling 12-month basis. Owners or operators would be required to keep records to demonstrate ongoing compliance with this section. A rolling 12-month period means that records must be available to demonstrate compliance with conditions of the individual PBR and §106.4 for any 12-month period within the five-year retention period. Additionally, any data for the partial month of an inspection should be available.

The five-year retention requirement is consistent with federal operating permit requirements and other commission general rules and supercedes any shorter periods noted in specific PBRs. Since new source review actions are applicable requirements for Title V operating permits, the more stringent five-year retention will apply to all major sources, regardless of the two-year retention requirement in §116.115. The five-year retention period will begin on January 1, 2002. The commission is soliciting comments on the five-year retention requirement, especially as it affects small businesses and minor sources, as a part of this notice.

#### *Subchapter G: Combustion*

The proposed amendments to §106.181 would revise the title of the section and revise and restructure the text of the rule to clearly state that this PBR applies only to small combustion units burning used oil.

#### *Subchapter K: General*

The current §106.263 has historically been used to authorize temporary facilities and a wide variety of maintenance activities. The commission proposes its repeal in order to replace it with a proposed new §106.263 which would establish conditions for routine maintenance, routine start-up and shutdowns, and temporary facilities associated with maintenance to ensure air emissions from these activities and facilities meet the intent of TCAA, §382.057, Exemptions. Many maintenance activities have the potential to emit significant quantities of air contaminants which otherwise should be controlled or eliminated.

Under TCAA, §382.057, the commission may establish rules for "changes within facilities if it is found upon investigation that such changes will not make a significant contribution of air contaminants to the atmosphere." Proposed new §106.263 could be claimed for insignificant air emissions associated with the types of activities identified in the section. If a facility could not meet the conditions of proposed new §106.263, the owner or operator would be required to either obtain authorization under an air permit or meet the requirements for exemption of unauthorized emissions under §101.11. These mechanisms are used for different circumstances of maintenance, start-up, and shutdown emissions. Emissions which are routine but insignificant (as defined by §106.4 and specific PBR limits) and are not otherwise covered by an air quality permit limit could be authorized under the new §106.263. Significant emissions which are predictable and routine should be included in the appropriate air quality permit. If total emissions from maintenance, start-up, or shutdown activities could not meet the requirements of the proposed §106.263 and §106.4 and they are not otherwise authorized by a permit, the owner or operator would need to report the emissions under §101.7 and meet the requirements for an exemption under §101.11.

Proposed new §106.263(b) would establish the types of maintenance, start-up and shutdown activities, and temporary maintenance facilities which are excluded from authorization under this PBR. This PBR is not intended to authorize permanent facilities. In addition, the proposed section would not be applicable to facilities which do not have to obtain authorization under Chapter 106, but instead meet the requirements of §116.119 for de minimis facilities. Finally, some activities and temporary maintenance facilities are authorized under other PBRs in Chapter 106. Specifically listed in the rule are several PBRs which the commission has historically viewed as including or addressing maintenance, start-up, or shutdown activity emissions. These PBRs include: §106.231, Manufacturing, Refinishing, and Restoring Wood Products; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.355, Metering, Purging, and Maintenance of Pipelines; §106.392, Thermoset Resin Facilities; §106.418, Printing Presses; §106.433, Surface Coat Facilities; §106.435, Classic or Antique Automobile Restoration Facilities; §106.436, Auto Body Refinishing Facility; §106.353, Temporary Oil and Gas Facilities; and §106.512, Stationary Engines and Turbines. If facilities are operating under these designated PBRs, use of the proposed new §106.263 would not be allowed in order to prevent multiple uses of PBRs authorizing maintenance emissions.

Proposed new §106.263(c) would establish the types of maintenance, start-up and shutdown activities, and temporary maintenance facilities which can be authorized under this PBR. This subsection defines routine activities as those which occur at a frequency of at least once per year so as to describe what types of activities are reasonably expected to be part of normal operations. Activities occurring less frequently than this would not be considered by the commission to be part of normal facility operations. If not authorized under either Chapter 106 or Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, these infrequent events should be reported under §101.7. The commission is soliciting comments regarding the definition of "routine" in this section.

Proposed new §106.263(c)(2) would cover maintenance which has the potential to emit air contaminants at existing, permanent facilities. Maintenance and associated start-up and shutdown activities are routine or planned activities which keep a facility at normal operating parameters and are usually preventative in nature. Since maintenance is part of normal operations and, in many cases, facilities and processes usually require shutdown for these activities, additional emissions associated with start-up and shutdown are included in this definition. The proposed definition addresses all aspects of maintaining a facility and includes: 1) cleaning where materials (water, steam, high pressure air, solvent, detergent) are added to begin to clean or restore internal or external surfaces; 2) facility operation in a unique mode to clean (such as firing in a combustion chamber to burn off deposits or pumps which are directed to circulate solvent for restoration); or 3) the addition of lubrication and corrosion protection. The proposed rule also specifies that maintenance does not include enhancements nor construction, installation, or operation of permanent facilities. Enhancements are any physical changes or changes in method of operation with insignificant emissions increases, including changes at an existing facility that result in improvements in unit capacity/capability beyond previously existing performance levels. These enhancements would be specifically excluded from authorization under this PBR. Potential emissions

associated with enhancements and other changes would have to be authorized under a permit or another PBR.

Proposed new §106.263(c)(3) would establish an authorization mechanism for recurring start-ups and shutdowns. Consistent with Chapter 116 policies and guidance, routine start-ups and shutdowns would be authorized under this PBR and are expected to have emissions similar in nature to those during start-up and shutdown for maintenance activities. The commission believes facilities exist in at least one of three states or modes: start-up, normal operation, or shutdown. Start-up is the set of activities and associated emissions that prime and prepare a facility to transition from no production to production at the normal operating range. Normal operation includes the common activities of the facility, including maintenance. Shutdown is the period beginning where the facility is brought below the normal operating range to ceasing operation, and includes the emptying and degassing/depressurization of the equipment. Shutdown ends at the point start-up begins. An upset can occur during any of these states or modes, and emissions resulting from the upset are not intended to be covered in this rule or by a permit and would need to be reported under §101.6, Upset Reporting and Recordkeeping Requirements. The commission is soliciting comments regarding the proposal to authorize routine start-up and shutdown emission in this PBR.

Proposed new §106.263(c)(4) would include the construction and operation of temporary facilities used to perform maintenance work. Several types of temporary maintenance facilities have historically been registered and authorized under the PBR in the current §106.263. In many cases, emissions from temporary maintenance facilities occur at the same time as other maintenance activities; therefore, keeping these requirements in a single PBR would reduce duplication of records. The proposed new §106.263(c)(4)(A) - (E) would specifically define five types of temporary facilities which would be covered under this rule. These temporary maintenance facilities are included in this proposal because they have been historically authorized by the commission and have a record of insignificant emissions. No other temporary maintenance facilities have been included in this rule, but the commission is soliciting comment on further inclusions.

Proposed new §106.263(c)(4)(A) would include abrasive blasting, surface preparation, and surface coating operations on immovable, fixed structures. Historically, the commission has authorized these maintenance activities under the current §106.263 if the blasting, surface preparation, and coating supplies and equipment are taken to the object fixed in place and there is no practical means of moving the object to a designated area for surface preparation. These fixed objects include, but are not limited to, highway bridges, water towers, and buildings. If an object can be taken to a designated area, then other PBRs such as §106.433, Surface Coat Facility, and §106.452, Dry Abrasive Cleaning, would apply. Proposed new §106.263(c)(4)(B) would cover engines and turbines during testing and repair. Since 1995, the commission has allowed testing of an engine or turbine to be considered part of the maintenance on that unit and authorized emissions associated with testing under the current §106.263. The stationary engines and turbines historically authorized under §106.512, along with their routine maintenance, start-up, and shutdown, would not be covered under the proposed new §106.263. During the next fiscal year, the commission plans to develop a standard permit to cover these facilities. Until a new PBR or standard permit is adopted which specifically addresses engine and turbine

testing, the proposed authorization as a temporary facility in §106.263 is necessary.

Proposed new §106.263(c)(4)(C) would include engines, compressors, and pumps which are associated with maintenance activities. These additional units are frequently seen in the field when maintenance activities occur and have historically been authorized under the PBR in the current §106.263. The use of this PBR is not intended for replacement units, but only additional facilities which are needed during maintenance. Proposed new §106.263(c)(4)(D) would define several abatement units associated with controlled degassing and cleaning of vessels. While abatement would not specifically be required by this PBR, the proposed subparagraph would clarify under what conditions control equipment, when used, would be authorized by this PBR. Finally, §106.263(c)(4)(E) would define temporary piping and associated facilities which are needed to bypass a unit or section of pipeline during maintenance situations. Such bypass lines reduce or eliminate emissions during maintenance.

Proposed new §106.263(d) would address several limits associated with the activities and facilities covered under this PBR. Proposed new §106.263(d)(1)(A) - (E) would require the control systems identified in the proposed new §106.263(c)(4)(D) to meet collection and destruction or removal efficiencies specified in other current commission regulations when the systems are used. The limits of §106.263(d)(2) - (5) are intended to ensure compliance with the TCAA. Proposed new §106.263(d)(2) and (3) outline limitations on activity emissions in accordance with TCAA, §382.002. Emission releases for any maintenance, start-up, or shutdown event are limited to less than those values defined in §101.1(82), Reportable Quantities. If activity emissions are greater than these values, by not authorizing them in this PBR, the commission would be able to evaluate the event prior to occurrence to ensure emissions are adequately controlled or minimized to the greatest extent possible. Maintenance, start-up, or shutdown emissions above the reportable quantities must be reported and qualify for exemption under §101.7 and §101.11. The commission is soliciting comments on the RQ limitations proposed as discussed earlier in this paragraph, particularly for oxides of nitrogen.

Additionally, proposed new §106.263(d)(3) would address the accumulation of emissions over an annual period of time to ensure compliance with the intent of Chapter 106 to authorize insignificant emissions. This paragraph would limit the accumulation (stacking) of emissions over an annual period by specifying that the emissions resulting from maintenance, start-up, and shutdown, as well as associated temporary facilities at a site, must collectively be less than any applicable emission limit in §106.4. By definition, individual uses of PBRs authorize insignificant emissions. To date, there has been no general mechanism by which the commission limits multiple uses of PBRs. This is problematic because multiple uses of insignificant authorizations may result in significant emissions, based on quantity or toxicity. The requirement that emissions for maintenance and repair at a site do not collectively and cumulatively exceed the emission requirements in §106.4 for any 12-month period is intended to reduce unaccounted for emissions associated with maintenance and repair.

To ensure that construction of all facilities and associated emissions are properly authorized under either Chapter 116 or Chapter 106 in accordance with TCAA, §382.051, proposed new §106.263(d)(4) and (5) contain certain limitations. These paragraphs would require maintenance, start-up, or shutdown

activities that cannot meet the emission limitations in proposed §106.263(d)(2) and (3) to either obtain a permit under Chapter 116 or report and meet the requirements for exemption under §101.7 and §101.11. In addition, proposed new §106.263(d)(5) would require an owner or operator of a temporary facility that cannot meet the emissions limitations of proposed new §106.263(d)(3) to obtain a preconstruction permit authorization under Chapter 116.

Proposed new §106.263(d)(6) would also outline requirements and restrictions for activities and facilities to meet the requirements of the TCAA. This proposed paragraph would establish the length of time temporary facilities are expected to operate at a given location when being used to support maintenance activities. In most cases, it is not expected that these facilities would operate for more than 180 days. The proposed rule addresses maintenance activities requiring the operation of temporary facilities for more than 180 days by requiring registration of that facility with a PI-7 Registration Form. The commission is expecting to use these registrations as one of the bases for possible future rule changes after evaluation of short-term emission rates and associated potential impacts to ensure protection of the public health and welfare.

Proposed new §106.263(e) would require specific records that demonstrate compliance with all conditions of the section. These records would have to be maintained in a format consistent with the format required by §101.7.

Review of quantifications of air emissions resulting from maintenance and repair activities or temporary facilities associated with maintenance will be used to determine whether short-term emission rates and the scope of the PBR should be addressed in future regulations.

#### *Subchapter O: Oil and Gas*

The proposed amendments to §106.355 would slightly modify the section title to become "Pipeline Metering, Purging, and Maintenance" and clarify language and add conditions limiting certain emissions, defining the relationship of this rule to others that are possibly applicable, and requiring recordkeeping. The wording of the current section is not clear with respect to what pipelines the commission intends to cover with this rule. The phrase "between separate sites, as defined in §122.10(29) of this title (relating to Definitions)" would be added to clarify that the section has historically covered pipeline operations which are separate from process piping at a single site. Process piping is covered by other sections of Chapter 106 or under an air quality permit. Section 106.352, Oil and Gas Production Facilities, covers oil and gas exploration and production pipelines. The commission determined §106.352 covers gas pipelines up to, but not beyond, the natural gas liquids plant serving the line, as well as crude oil pipelines all the way to the initial refining operation.

Proposed §106.355(2) would exclude uncontrolled releases of butadiene to the atmosphere. Butadiene is highly toxic compound currently being reviewed by the commission. Under the current version of this rule, up to one ton of butadiene can be released to the atmosphere during any metering, purging, or maintenance operation. By continuing to authorize controlled emissions of butadiene through combustion in a smokeless flare, the proposed amendment would continue to allow necessary maintenance and purging while being more protective of the public's health and safety. A negligible amount of butadiene is specified for those cases where it may apply.

Proposed §106.355(3) would exempt certain pipeline maintenance activities involving sweet natural gas from recordkeeping requirements because generally sweet natural gas is not a threat to the general public or their property. This paragraph would also specifically prohibit venting of sweet natural gas near a known or suspected ignition source to ensure public health and safety.

Proposed §106.355(4) would require the regulated community to meet the requirements of this section in its entirety or to obtain authorization under Chapter 116. It would also specify that complying with §101.7 and meeting the requirements in §101.11 would be necessary in those cases where authorization under this section or Chapter 116 is not possible. This wording is necessary to ensure the regulated community is aware of its obligations and choices under the TCAA and the rules of the commission.

Proposed §106.355(5) would require recordkeeping to demonstrate compliance with the section. Operations authorized by proposed §106.355 would likely include many different points on one or more pipelines belonging to a single operator. This paragraph would allow the owner or operator to maintain all records demonstrating compliance in a single set of files at an appropriate site in Texas. The records would consist of the information required to describe the maintenance activities and their associated emissions. To ensure clarity, this paragraph would also state that the resetting of flow meters and their calibration are considered routine operations, separate from maintenance and purging.

#### *Subchapter T: Surface Preparation*

Proposed §106.454(3) would exclude remote reservoirs since they are more specifically covered under §106.454(2). Even though remote reservoirs may be a subset of cold solvent cleaners, the two types of equipment do not operate in the same way and have different designs. In a remote reservoir unit, the liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area. Thus, a freeboard ratio requirement is not applicable to remote reservoirs because the solvent does not pool around the parts. For a cold solvent cleaner, the solvent does pool around the parts and a freeboard is necessary. The purpose of the freeboard is to ensure that when parts are placed into the solvent pool there is enough empty air space between the solvent level and the top of the tank to minimize solvent drag out when an air stream passes over the open reservoir. The design also prevents solvent overflow when parts are placed in the pool, thus decreasing air emissions.

In summary, the commission is soliciting comments on the entire proposal and specifically on several areas within this proposal, including: 1) the five-year retention requirement in proposed new §106.8, especially as it affects small businesses and minor sources; 2) the limitation of the proposed new §106.263 for "routine" activities; 3) the inclusion in proposed new §106.263(c)(4) of any additional temporary facilities historically used and reviewed by the commission under the current §106.263; 4) the inclusion of routine start-up and shutdown emissions in proposed new §106.263(c)(3); and 5) the limitation of maintenance, start-up, and shutdown emissions to less than the reportable quantities of §101.1, particularly oxides of nitrogen, in proposed new §106.263(d)(2).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications to units of state or local government as a result of implementation of the proposed rules. The proposed rules are estimated to cost units of state and local government up to \$500 per year to comply with expanded recordkeeping requirements for facilities that are small air emission sources authorized to operate by an air quality PBR.

The proposed rules are intended to specify recordkeeping requirements and compliance demonstrations; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine start-up, shut down, and maintenance activities and associated temporary maintenance facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities. The commission estimates that there will be fiscal implications, which are not anticipated to be significant, to units of state and local government due to implementation of the recordkeeping requirements of this proposal. The remaining provisions are procedural in nature and are not expected to result in additional fiscal implications for units of state and local government.

The proposed recordkeeping requirements will affect all past, present, and future facilities permitted by rule by the commission since 1972. Owners and operators of businesses, local governments, school and water districts, and small governmental organizations which have used PBRs to authorize construction, changes to, or operation of insignificant emission sources would be required to retain records beginning January 1, 2002. The specific types of records to be retained will depend on the requirements of the PBR, but could include a copy of the PBR and general requirements claimed, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available upon request. Additionally, the proposal would require that records be retained for five years and that records be maintained that demonstrate compliance with annual emission limits on a rolling 12-month basis.

There are numerous PBRs that already require recordkeeping. Examples of facilities and operations include: boilers, heaters, and other combustion devices; aerospace equipment and parts manufacturing; semiconductor manufacturing; paint, varnishes, ink, and other coating manufacturing; surface coating facilities; and stationary engines and turbines. The primary impact to these facilities would be the extension of records retention from a few months to five years. Additionally, there are PBRs that have specific construction or operational restrictions but do not contain recordkeeping requirements. The proposal would require these facilities to create operational records to demonstrate compliance beginning on January 1, 2002. These facilities would also have to adhere to the five-year records retention requirement. Examples of these facilities and operations include: pilot plants, batch mixers, rock crushers, wet sand and gravel productions, asphalt concrete plants, animal feeding operations, small boilers and heaters, temporary oil and gas facilities, and municipal solid waste landfills and transfer stations. Owners and operators which claim emissions for maintenance activities under a PBR instead of an air permit would also have to keep records to ensure emissions are insignificant and the facility meets conditions of the rules.

The final grouping of facilities affected by the proposed rules are those sources that would not be required to retain ongoing compliance records but would only have to collect and present information when individually requested. The level of detail in the records these facilities would have to retain would depend on the specific requirements in the facility's PBR. Examples of these facilities and operations include: hydraulic and hydrostatic testing equipment; bench scale laboratory equipment; race tracks, zoos, and animal shelters; vacuum cleaning systems; aqueous fertilizer storage; wet blast cleaning; powder coating facilities; photographic process equipment; and sewage treatment facilities.

The total number of units of state and local government affected by the proposed rules cannot be determined at this time. The majority of facilities seeking PBRs since 1972 have not been required to register with the commission. Of those that do require registration, the commission processes approximately 4,000 PBR applications per year. The commission estimates that a comparatively small number of affected facilities are owned and operated by units of state and local government and many already maintain records to show compliance. However, there may be a small number that have not kept information that would now be required to do so by the proposed rules. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be maintained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to units of state and local government with facilities that are not required to retain ongoing compliance records.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with air emission standards due to more extensive record retention requirements.

The proposed rules are intended to specify recordkeeping requirements and compliance demonstrations for past, present, and future air quality PBRs issued by the commission; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine maintenance activities and associated facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities. The commission estimates that there will be fiscal implications, which are not anticipated to be significant, to private businesses due to implementation of the recordkeeping requirements of this proposal. The remaining provisions are procedural in nature and are not expected to result in additional fiscal implications to individuals or private businesses.

The proposed recordkeeping requirements will affect past, present, and future facilities permitted by rule by the commission since 1972. Owners and operators of businesses which have used PBRs to authorize construction, changes to, or operation of insignificant emission sources would be required to retain records beginning January 1, 2002. The specific types of records to be retained will depend on the requirements of the PBR, but could include a copy of the current PBR, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available

upon request. Additionally, the proposal would require that records be retained for five years and that records be retained that demonstrate compliance with annual emission limits on a rolling 12-month basis.

The total number of businesses throughout the state affected by the proposed rules could exceed 100,000, with 70,000 being small or micro-businesses. The majority of facilities seeking PBRs since 1972 have not been required to register with the commission. Of those that do require registration, the commission processes approximately 4,000 PBR applications per year, the majority of which are submitted by private businesses. The registrations are broken down by the following: 1,200 registrations per year for stationary engines and turbines and oil and gas production facilities; 800 registrations per year for miscellaneous facilities and emission releases; 400 registrations per year for surface coating and auto body refinishing facilities; 400 registrations per year for water and soil remediation operations; 400 registrations per year for aggregate, sand, and material handling operations; 400 registrations per year for materials loading, unloading, and storage in tanks and vessels; and 400 registrations per year for trench burning operations. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be retained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to companies with facilities that are not required to retain ongoing compliance records.

The total state-wide costs to comply with this proposal is estimated not to exceed approximately \$50 million a year.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of implementation of the proposed rules. These proposed rules are intended to specify recordkeeping requirements and compliance demonstrations for past, present, and future air quality PBRs issued by the commission; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine start-up, shut down, and maintenance activities and associated temporary maintenance facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities.

The proposed rules will affect a wide range of small and micro-businesses that utilize PBRs to authorize construction, changes to, or operation of insignificant emission sources by requiring the retention of compliance records beginning January 1, 2002. The specific types of records to be maintained will depend on the requirements of the PBR and the general requirements of the chapter, but could include a copy of the current PBR, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available upon request from commission staff or any air pollution control program having jurisdiction.

Small and micro-businesses apply for PBRs in a wide variety of categories, including the following: manufacturing, refinishing, and restoring of wood products; foundry sand mold forming equipment; aqueous solutions for electrolytic and electroless

processes; thermostat resin facilities; printing presses; dry abrasive cleaning; organic and inorganic liquid loading and unloading; and hydrochloric acid storage.

The commission has researched the number of facilities that are considered to be small or micro-businesses that may be subject to PBRs and has determined that at least 70,000 small and micro-businesses may be affected by the proposed rules. It is estimated that the majority of small and micro-businesses affected by the proposed rules are already required to retain compliance records and would have to implement the five-year retention requirement to comply with the new standards. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be maintained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to small or micro-businesses with facilities that are not required to retain ongoing compliance records.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. It is estimated that it will cost affected small or micro-businesses up to approximately \$500 per year to comply with the proposed rules. A small business with 100 employees would incur costs of approximately \$5.00 per employee while a micro-businesses with 20 employees would incur costs of approximately \$25 per employee. The overall cost associated with these rules is not expected to change with the number of employees employed, but the cost per employee would vary depending on the number of persons employed by an affected business.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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.

This proposal is not a major environmental rule because its primary purpose is not to protect the environment or reduce risks to human health from environmental exposure, but rather to specify the types of records required to ensure compliance with the individual and general conditions of PBRs and to specify the activities which may be authorized under particular PBRs. Specifically, the new and amended sections relate to recordkeeping requirements for all PBRs; emissions related to maintenance on facilities and emissions related to temporary maintenance facilities; pipeline metering, purging, and maintenance; specifications for cold solvent remote reservoir cleaners; and the applicability of the PBR for used oil combustion units.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule

is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. First, this proposal does not exceed a standard set by federal law, but it is consistent with federal standards relating to emissions monitoring and recordkeeping requirements. Second, this proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; TCAA, §382.016, which authorizes the commission to require the measuring and monitoring of air contaminant emissions from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs; §382.057, which establishes the commission's authority concerning exemptions; as well as the other sections cited in the STATUTORY AUTHORITY section of this preamble. Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The state is required to have a minor stationary source program under 42 United States Code, §7410(a)(2)(C), and PBRs are part of the minor stationary source program. Fourth, this proposal was not developed solely under the general powers of the agency, but was specifically developed under the specific state laws and authorizations noted in the STATUTORY AUTHORITY section of this preamble. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed rules is to revise the rules to establish and clarify the requirements for compliance demonstrations and the activities which may be authorized under particular PBRs. The proposed rules will substantially advance these stated purposes by providing specific rule provisions that address these matters.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the subject proposed rules do not affect a landowner's rights in private real property because this proposal 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 rules.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to

actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity and quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). In carrying out its duty to maintain and control the state's air quality, the commission is proposing to clarify the regulatory requirements in Chapter 106, which authorizes facilities and associated activities that will not make a significant contribution of air contaminants to the atmosphere. Specifically, the proposal clarifies the application and use of the specific PBRs addressed in this proposal and clarifies the general recordkeeping requirements for all PBRs. In addition, the CMP policy applicable to this action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This action complies with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because Chapter 106 contains applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits), owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 106 requirements for each emission unit affected by the revisions to Chapter 106 at their site.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held May 29, 2001, at 10:00 a.m. in Room 2210, Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

#### 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 by fax at (512) 239-4808. All comments must be received on June 4, 2001, and should reference Rule Log No. 2000-051-106-AI. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Jill Burditt at (512) 239-0560.

#### SUBCHAPTER A. GENERAL REQUIREMENTS

##### 30 TAC §106.8

##### STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed new section implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.8. Recordkeeping.

(a) Owners or operators of facilities and sources that are de minimis as designated in §116.119 of this title (relating to De Minimis Facilities or Sources) are not subject to this section.

(b) Owners or operators of facilities operating under a permit by rule (PBR) in Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling) or under those PBRs that only name the type of facility and impose no other conditions in the PBR itself do not need to comply with specific recordkeeping requirements of subsection (c) of this section. A list of these PBRs will be available through the commission. Upon request from the commission or any air pollution control program having jurisdiction, claimants must provide information that would demonstrate compliance with §106.4 of this title (relating to Requirements for Permitting by Rule) and the PBR under which the facility is authorized.

(c) Owners or operators of all other facilities authorized to be constructed and operate under a PBR must retain records as follows:

(1) permanently maintain a copy of each PBR and the applicable general conditions under which the facility is operating. The PBR and general requirements claimed should be the version in effect at the time of construction or changes to an existing facility whichever is most recent. The PBR holder may elect to comply with a more recent version of the applicable PBR and general requirements;

(2) maintain records containing sufficient information to demonstrate compliance with the following:

(A) all applicable requirements of §106.4 of this title or the general requirements, if any, in effect at the time of the claim; and

(B) all applicable PBR conditions;

(3) keep all required records at the facility site. If however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site;

(4) make the records available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction; and

(5) beginning January 1, 2002, keep records to support a compliance demonstration for any consecutive 12-month period. All records must be retained for at least five years.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102314

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: June 4, 2001

For further information, please call: (512) 239-4712

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**SUBCHAPTER G. COMBUSTION**

**30 TAC §106.181**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed amendment also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

*§106.181. Used-Oil Combustion Units [Small Boilers, Heaters, and Other Combustion Devices].*



~~[(a)] Small boilers and [-] heaters burning used oil that has not been mixed with hazardous waste [-; drying or curing ovens, furnaces, or other combustion units, but not including stationary internal combustion engines or turbines,] are permitted by rule provided that all of the following conditions [of this section] are met [-:]~~

~~[(b)] Combustion units may burn used oil as a fuel as long as the used oil has not been mixed with hazardous waste and the combustion unit meets the following conditions:-]~~

~~(1) the combustion unit or combination of combustion units at the same account have a maximum capacity of 1.0 million Btu per hour (MMBtu/hr) and each individual combustion unit is not greater than 0.5 MMBtu/hr;~~

~~(2) the combustion gases from the combustion unit(s) are vented to the ambient air in accordance with the following requirements:~~

~~(A) through an unobstructed vent; or~~

~~(B) through a vertical vent with a cap; and~~

~~(i) a flat roof, through a minimum of a three-foot stack; or~~

~~(ii) a sloped roof, through a stack that is at least three feet higher than the highest point on the roof or three feet higher than a point extending ten feet horizontally from the roof; and~~

~~(3) the combustion unit(s) burns only used oil the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.~~

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

Filed with the Office of the Secretary of State, on April 23, 2001.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: June 4, 2001

For further information, please call: (512) 239-4712



## SUBCHAPTER K. GENERAL

### 30 TAC §106.263

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the

quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed repeal implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed repeal also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

#### §106.263. Repairs and Maintenance.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102316

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: June 4, 2001

For further information, please call: (512) 239-4712



#### STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed new section implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.

(a) This section authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following maintenance, start-up and shutdown of facilities, and new facilities are not authorized under this section:

(1) construction of any new or modified permanent facility;

(2) facilities and sources that are de minimis as allowed in §116.119 of this title (relating to De Minimis Facilities or Sources); and

(3) any emissions associated with operations claimed under the following sections of this chapter:

(A) §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products);

(B) §106.351 of this title (relating to Salt Water Disposal (Petroleum));

(C) §106.352 of this title (relating to Oil and Gas Production Facilities);

(D) §106.353 of this title (relating to Temporary Oil and Gas Facilities);

(E) §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance);

(F) §106.392 of this title (relating to Thermoset Resin Facilities);

(G) §106.418 of this title (relating to Printing Presses);

(H) §106.433 of this title (relating to Surface Coat Facility);

(I) §106.435 of this title (relating to Classic or Antique Automobile Restoration Facility);

(J) §106.436 of this title (relating to Auto Body Refinishing Facility); and

(K) §106.512 of this title (relating to Stationary Engines and Turbines).

(c) The following activities and facilities are authorized under this section:

(1) routine activities which are those that are planned or can be projected to occur at least once in any 12-month period;

(2) maintenance, including associated start-up and shutdown, which includes recurring or planned activities which keep a facility at normal operating parameters or repairs which return a facility to normal operating parameters and are not considered "reconstruction" under 40 Code of Federal Regulations 60, New Source Performance Standards, Subpart A, §60.15 (relating to Reconstruction) and which does not include enhancement of facilities nor construction, installation, or operation of permanent facilities;

(3) start-up and shutdown activities which are part of normal facility operation; and

(4) temporary maintenance facilities which are constructed in conjunction with maintenance activities. Temporary maintenance facilities include only the following:

(A) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(B) facilities used for testing and repair of engines and turbines;

(C) compressors, pumps, or engines and associated pipes, valves, flanges, and connections, not operating as a replacement for an existing authorized unit;

(D) flares, vapor combustors, catalytic oxidizers, thermal oxidizers, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus cleaning apparatus that will have or cause emissions; and

(E) temporary piping required to bypass a unit or pipeline section undergoing maintenance.

(d) Emission and operational limits for maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities are as follows.

(1) Temporary facilities defined in subsection (c)(4)(D) of this section are limited to the following:

(A) flares or vapor combustors must meet the requirements of §106.492(1) and (2)(C) of this title (relating to Flares);

(B) catalytic oxidizers must meet the requirements of §106.533(5)(C) of this title (relating to Water and Soil Remediation);

(C) thermal oxidizers must meet the requirements of §106.493(2) and (3) of this title (relating to Direct Flame Incinerators);

(D) carbon adsorption systems must meet the requirements of §106.533(5)(D) of this title; and

(E) other control devices used to control vents caused by the degassing of process vessels, storage vessels, and associated piping have an overall vapor collection and destruction or removal efficiency of at least 90%.

(2) Emissions from each maintenance, start-up, and shutdown event, not including temporary maintenance facilities, are limited to 24-hour emission totals which are less than the reportable quantities defined in §101.1(82) of this title (relating to Definitions).

(3) Emissions from all activities and temporary maintenance facilities covered by this section for a site must collectively and cumulatively be less than any applicable emission limit under all subsections of §106.4 of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.

(4) Any maintenance, start-up, or shutdown activity that cannot meet the limitations of paragraphs (2) and (3) of this subsection must be authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements, and Demonstrations).

(5) Any temporary maintenance facility that cannot meet the limitations of paragraph (3) of this subsection must obtain authorization under Chapter 116 of this title.

(6) Temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days or the completion of a single project unless the facility is registered. If a single project requires more than 180 consecutive days to complete, the facilities must be registered using a PI-7 Form, along with documentation on the project. Registration and supporting documentation shall be submitted upon determining the length of the project will exceed 180 days, but no later than 180 days after the project begins.

(e) Facility owners or operators must retain records containing sufficient information to demonstrate compliance with this section and must include information listed in paragraphs (1) - (5) of this subsection. Documentation must be separate and distinct from records maintained for any other air authorization. Records must identify the following for all maintenance, start-up, or shutdown activities and temporary maintenance facilities:

- (1) the type and reason for the activity or facility construction;
- (2) the processes and equipment involved;
- (3) the date, time, and duration of the activity or facility operation;
- (4) the air contaminants and amounts which are emitted as a result of the activity or facility operation; and
- (5) any actions taken to minimize the emissions.

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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4712



## SUBCHAPTER O. OIL AND GAS

### 30 TAC §106.355

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority

concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions

*§106.355. Pipeline Metering, Purging, and Maintenance [of Pipelines].*

Metering, purging, and maintenance operations for gaseous and liquid petroleum pipelines (including ethylene, propylene, butylene, and butadiene pipelines) between separate sites, as defined in §122.10(29) of this title (relating to General Definitions), are permitted by rule provided that operations are conducted according to the following conditions of this section:

- (1) emissions of volatile organic compounds except equipment leak fugitive emissions, are burned in a smokeless flare; or
- (2) total uncontrolled emissions of any air contaminant may [will] not exceed one ton during any metering, purging, or maintenance operation. [;] Uncontrolled butadiene emissions may not exceed 0.04 lb/hr.

(3) venting of sweet, commercial grade natural gas from pipelines is exempt from paragraphs (1), [and] (2), and (5) of this section. Operators may not vent gas in areas of known or suspected ignition sources. [Care must be taken not to vent the gas in an area where an ignition source may exist or where accidental ignition of the gas may increase risk of fire at nearby tanks or other facilities.]

(4) if any maintenance activity cannot meet all of the requirements of this section, or the emissions are not authorized under Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification), then activities must comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Demonstrations).

(5) records of all maintenance and purging emissions must be kept by the owner or operator of the facility or group of facilities at the nearest office within Texas having day-to-day operational control. These records must include all information required in this paragraph and in paragraphs (1) - (4) of this section. Resetting flow meters (changing orifice plates, etc.) and calibration of meters are considered routine operations under this rule, not maintenance or purging. Records must identify the following for all maintenance and purging activities covered by this section:

- (A) the type and reason for the activity;
- (B) the processes and equipment involved;
- (C) the date, time, and duration of the activity;
- (D) the air contaminants and amounts which are emitted as a result of the activity; and
- (E) the actions taken, if any, to minimize the emissions.

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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Texas Natural Resource Conservation Commission  
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## SUBCHAPTER T. SURFACE PREPARATION

### 30 TAC §106.454

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed amendment section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

#### §106.454. *Degreasing Units.*

Any degreasing unit that satisfies the following conditions of this section is permitted by rule.

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

(3) The following conditions apply only to cold solvent cleaners, not including remote reservoirs.

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

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

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

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## CHAPTER 279. WATER QUALITY CERTIFICATION

The Texas Natural Resource Conservation Commission (agency, commission, or TNRCC) proposes amendments to 30 TAC Chapter 279, Water Quality Certification, §§279.1 - 279.12; the repeal of §279.13; and new §279.13; to revise procedures for waivers of certification, amend enforcement provisions, and modify existing language for consistency with other agency rules.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Title 33 United States Code (USC), §1341, commonly known as the federal Clean Water Act (CWA), §401, requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The commission rules in Chapter 279 contain the procedures for public notice and review of any such activity proposed to be authorized by federal permit, including applications for dredge and fill permits issued by the U.S. Army Corps of Engineers (Corps). Under Chapter 279, the commission reviews the proposed activity for compliance with 30 TAC Chapter 307, Water Quality Standards, and Texas Water Code (TWC), §26.011, §26.023, §26.027, §26.121, and §26.127, which direct the commission to act to protect the quality of water in the state. The proposed amendments would provide for the executive director either to review the proposed activity or to waive certification.

The amendments would also specifically allow the executive director to waive certification when the applicant agrees to include specific water quality-related conditions in the permit. The amendments would also add detail concerning the time and procedures for the executive director's review of permit applications. The proposed amendments would expand the category of persons who may request a public meeting, allow the executive director to waive public notice in an emergency or when certification is waived, more clearly describe the type of public meetings that may be held on certification decisions in response to public comments received, and change notice requirements for public meetings. If the executive director grants, grants conditionally, or denies certification, the proposed amendments would specify the contents of the statement of this decision. The proposed amendments would specify the persons to receive notice of a decision, and, if the activity is certified, a statement of reasonable assurance that the proposed activity will not violate water quality standards. Finally, this proposal would require applicants to comply with agreements and permit conditions resulting from the certification procedures in these rules, and provide for enforcement for noncompliance.

The commission proposes these changes in order to partially restructure the certification process, making it less cumbersome and more flexible. Some of the proposed amendments are the outgrowth of recent discussions and agreements with the Corps

aimed at streamlining certification procedures on §404 permits. Some of the proposed amendments reflect the commission's and the Corps' conclusions, upon review of past practices, that the system should be revised to maximize interagency cooperation and minimize possible duplication of effort.

#### SECTION BY SECTION DISCUSSION

Section 279.1 is proposed to be amended to eliminate unnecessary recitation of language from the federal CWA.

Section 279.2(a) and (b) is proposed to be amended to make grammatical corrections and to change references from "TNRCC" to "agency," from "Clean Water Act" to "CWA," and from "Commission" to "commission," for consistency with style conventions of the *Texas Register* and to reflect current definitions in Chapter 3 of this title. Subsection (b)(4) is proposed to be amended to clarify that the executive director may waive certification upon agreement of an applicant to include and comply with water quality-related conditions in the applicant's federal permit. Section 279.2(c) is proposed to be amended to delete the provision that a commissioner may request that the commission review a certification application prior to the executive director's action on it.

Section 279.3 is proposed to be amended to clarify and update the following definitions to clarify acronyms, reflect accurate citations to law and regulations for consistency with definitions found elsewhere, and to make grammatical corrections: 401 Certification, 404 permit, applicant, aquatic ecosystem, Clean Water Act, emergency, general permit, individual permit, licensing or permitting agency, nationwide permit, National Pollutant Discharge Elimination System (NPDES) permit, regional administrator, and water dependent activity. The definition of "pollutant" would be changed to conform to TWC, §26.001. The definitions of "affected person" and "person" are proposed to be deleted because these terms are being eliminated from the proposed rules. The definition of "water quality limited segment" is proposed to be deleted because this term has never been used in the rules. The definitions of "commission" and "executive director" are proposed to be deleted because these terms are already defined in Chapter 3 of this title. Definitions have been re-numbered to reflect these changes.

Section 279.4(a) - (e) is proposed to clarify the use of acronyms, to accurately refer to "water" rather than "waters in the state," and to make grammatical corrections. Subsection (b)(3) is proposed to be amended to provide that the executive director may review the final permit decision document before acting on a request for certification.

Section 279.5(a) is proposed to be amended to make a grammatical correction, change "permit agency" to "permitting agency" to be consistent throughout the rules, and eliminate unnecessary references and redundant language. Section 279.5(b) is proposed to be amended to make a grammatical correction and to clarify an ambiguous pronoun. Subsection (b)(8) is proposed to be amended to use a common acronym (EPA) defined in Chapter 3 of this title. Subsection (b)(11) is proposed to be deleted because interested persons must respond to the notice, and a list of interested persons making comments on the certification will not be available until after the notice required by this section is mailed. Subsection (c)(3) is proposed to be amended to use a current definition (federal CWA) in Chapter 3 of this title. Subsection (c)(4) is proposed to be amended to use a current definition (agency instead of commission) in Chapter 3 of this title and to specify an agency mail code. Subsection (c)(6) is proposed to

be amended for consistency with current commission rules and terminology on public meetings and to reflect that any person may request a public meeting. Throughout this section, the term "public hearing" has been changed to "public meeting" to clarify that the proceeding contemplated in this chapter is a notice and comment meeting rather than an evidentiary contested case hearing. Section 279.5(d) is proposed to be added to state that the executive director may waive the notice requirements of this subsection when a permit review will be waived. Old §279.5(d) (renumbered §279.5(e)) is proposed to be amended to bring the section into consistency with commission rules and terminology on public meetings, to make the references to later sections of Chapter 279 conform to their new titles proposed to be amended in this rulemaking, to reflect current definitions (agency instead of commission) in Chapter 3 of this title, and to make grammatical corrections.

Section 279.6 is proposed to be amended by removing the requirement for the executive director to consider comments when certification is waived or when public notice has been waived in an emergency.

The title to §279.7 is proposed to be amended to make the distinction between a hearing and a public meeting. Section 279.7(a) is proposed to be amended to provide consistency with commission rules and terminology on public meetings, to clarify that the executive director may conduct a public meeting on any application for 401 certification based on public comments received during the public comment period or at a request from a commissioner, and to remove the reference to affected person. Subsection (a)(1) - (4) is proposed to be deleted to make requests for a public meeting easier and not restricted only to affected persons. Section 279.7(b) is proposed to be amended to clarify that the executive director shall notify the appropriate agencies that the executive director will make a certification decision after a public meeting and to provide consistency with commission rules and terminology on public meetings. Section 279.7(c) is proposed to be amended to provide consistency with commission rules and terminology on public meetings and to make a grammatical correction.

The title to §279.8 is proposed to be amended to provide consistency with commission rules and terminology on public meetings. Section 279.8(a) is proposed to be amended to change the number of days for the executive director to notify the applicant of a public meeting from 30 days to ten days to streamline and facilitate the certification process. Section 279.8(a) and (b) is also proposed to be amended to provide consistency with commission rules and terminology on public meetings, and to make a grammatical correction. Subsection (c)(2) is proposed to be amended to clarify that certifications deal with the discharge of pollutants, not the disposal of waste. Subsection (c)(3) is proposed to be amended to make its wording parallel with subsection (c)(2), to clarify that certifications deal with present or future activities, not only with present facilities, and to clarify that certifications deal with the discharge of pollutants, not the disposal of waste. Subsection (c)(8) is proposed to be amended to use a current acronym (EPA) defined in Chapter 3 of this title. Subsection (c)(11) is proposed to be amended to clarify that any person who commented during the public comment period will be notified of a public meeting. Section 279.8(d) is proposed to be amended to provide consistency with commission rules and terminology on public meetings, make grammatical corrections, and reduce the notice time for public meetings from 30 days to ten days, consistent with the proposed amendment to §279.8(a).

Section 279.9 is proposed to be amended to give the executive director wider discretion to waive certification and certification review as allowed by the federal CWA. Section 279.9(a) is proposed to be amended to provide that the executive director shall either conduct a review or waive certification. Section 279.9(b) is proposed to be amended to require that if the executive director conducts a review, after the review and any public meeting, the executive director shall make a determination on the proposed activity. Subsection (b)(2) is proposed to be amended to clarify which sections of the federal CWA that state certifications cover.

Section 279.10 is proposed to be amended to enumerate the actions the executive director may take on a certification consistent with procedures identified in the NPDES MOA. The title to §279.10 is proposed to be amended to use a current definition (agency instead of commission) in Chapter 3 of this title and to spell out the acronym for NPDES. Section 279.10(a) is proposed to be amended to use a common acronym (EPA) defined in Chapter 3 of this title, to enumerate the actions the executive director may take on a certification, and to make a grammatical correction. Subsection (a)(2) is proposed to be amended to make a grammatical correction and to use a common acronym (CWA) defined in Chapter 3 of this title. Subsection (a)(3) is proposed to be amended to use a current definition (agency instead of commission) from Chapter 3 of this title, to use a common acronym (CWA) defined in Chapter 3 of this title, and to eliminate an unnecessary recitation of language from the federal CWA. Subsection (a)(4) is proposed to be amended to eliminate an unnecessary recitation of language from the federal CWA.

The title to §279.11 is proposed to be amended to use a current definition (agency instead of commission) from Chapter 3 of this title. Section 279.11(a) is proposed to be amended to give the executive director the discretion whether to review or waive certification of any particular permit application. Section 279.11(c) is proposed to be amended to clarify the procedures to be followed if the executive director reviews a permit application. Subsection (c)(1) is proposed to be amended to make grammatical corrections and to reduce the burden on the applicant of demonstrating no practicable alternative. Subsection (c)(2) and (3) is proposed to be amended to make grammatical corrections. Subsection (c)(4) is proposed to be amended to make grammatical corrections to more clearly express that if the executive director determines the proposed compensatory mitigation will not accomplish the purpose and policy of this chapter, then certification may be denied even if alternatives are not available. Section 279.11(d) is proposed to be amended to clarify what actions the executive director may take, who shall receive notice of the executive director's decision, and to make a grammatical correction. Old subsection (d)(2) and (3) is proposed to be amended to clarify the contents of the statement of the executive director's decision, including a description of the materials and information reviewed from old subsection (d)(2), and to make a grammatical correction. Old subsection (d)(3)(A) is proposed for deletion, with needed concepts incorporated into proposed amendments to the old subsection (d)(3). Renumbered subsection (d)(2)(A) is amended to specify the contents of the statement of the executive director's decision if the activity is certified. Renumbered subsection (d)(2)(A)(i) is proposed to be amended to make grammatical corrections clarifying that the executive director must include a statement of reasonable assurance that the activity, if conducted in accordance with the terms of the proposed permit, will not violate the criteria enumerated in §279.9. Renumbered subsection (d)(2)(A)(ii) is proposed to

be amended to make a grammatical correction. Renumbered subsection (d)(2)(B) is proposed to be amended to clarify that if a certification is denied, the executive director's statement must include an explanation of how the proposed activity will not satisfy one or more of the criteria enumerated in §279.9.

Section 279.12(a)(1) is proposed to be amended to make grammatical corrections and to be consistent with state legal terminology. Section 279.12(a)(2) is proposed to be amended to make a grammatical correction, to delete subsection (a)(2)(D) - (F), because a list of appropriate or interested persons making comments on the certification will not be maintained until after the notice required by this section is mailed, and to make appropriate grammatical and punctuation corrections to subsection (a)(2)(B) and (C). Subsection (a)(3) is proposed to be amended to specify that the comments considered should be received in accordance with §279.5 of this title. Subsection (a)(4) is proposed to be amended to clarify that the executive director shall maintain a list of all applicable nationwide permits and the executive director's certification action on each permit. Subsection (b)(1) is proposed to be amended to make grammatical corrections and to be consistent with state legal terminology. Subsection (b)(2) is proposed to be amended to make a grammatical correction, to delete subsection (b)(2)(D) - (F) because a list of appropriate or interested persons making comments on the certification will not be maintained until after the notice required by this section is mailed, and to make appropriate grammatical and punctuation corrections to subsection (b)(2)(B) and (C). Subsection (b)(3) is proposed to be amended to specify that the comments considered should be received in accordance with §279.5 of this title. Subsection (b)(4) is proposed to be amended to clarify that the executive director shall maintain a list of all applicable general permits and the executive director's certification action on each permit. Old subsection (c)(2) is proposed to be deleted, and its language moved to old subsection (c)(1) that is proposed to be changed to an introductory paragraph for subsection (c). The new introductory paragraph now specifies that the executive director shall send notice to the specified persons and agencies of the decision to deny, grant, grant conditionally, or waive certification, and has a grammatical correction. All remaining subheadings in subsection (c) are proposed to be renumbered accordingly. Old subsection (c)(1)(B) (newly renumbered subsection (c)(2)) is proposed to be amended to require that a statement of the basis for the executive director's decision, including a description of the materials and information examined, shall be included in the certification notice; this requirement was formerly included in old subsection (c)(1)(C). New subsection (c)(2)(A) is proposed to be added to specify what the executive director's statement must include if the activity is certified. Old subsection (c)(1)(B)(i) (newly renumbered subsection (c)(2)(A)(i)) is proposed to be amended to state that the executive director's statement must include reasonable assurance that the activity, if conducted in accordance with the terms of the proposed permit, will not violate criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(ii)(I). Newly renumbered subsection (c)(2)(A)(ii) is proposed to be amended to require that the executive director's statement must include any monitoring and reporting requirements necessary to assure compliance with criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(ii)(II). New subsection (c)(2)(B) is proposed to be added to state that if certification is denied, the executive director's statement must include an explanation of why the proposed activity will not satisfy one or more of the criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(iii). Old subsection (c)(2)(C)

is proposed to be deleted because its provisions have been fully incorporated into newly renumbered subsection (c)(2). Old subsection (c)(2) is proposed to be deleted because its provisions have been fully incorporated into the introductory paragraph of §279.12(c).

Section 279.13 is proposed to be repealed. New §279.13 is proposed to eliminate outdated references, and to clarify the agency's existing enforcement authority in the 401 Certification program.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations Division, determined that for the first five-year period the proposed amendments are in effect there will not be significant fiscal implications for the commission or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The commission proposes these amendments in order to revise procedures for waiving certification, standardizing enforcement provisions, and clarifying existing language for consistency with other commission rules. The proposed amendments do not change the type or number of activities subject to review under the existing rules.

Some of the proposed amendments will facilitate procedures designed to cooperatively streamline certifications of Corps 404 permits. TNRCC recently entered into an MOA with the Corps, the purpose of which is to implement a process for interagency cooperation and review of individual 404 permit applications under the federal CWA, §401, while maintaining state water quality standards in §404 projects. Section 404 permits are issued by the Corps under the authority of the federal CWA, §404, which authorizes the discharge of dredged or fill material into the waters of the United States. This fill or dredged material may be used in such projects as marsh construction; new road construction by the Texas Department of Transportation (TxDOT); industrial expansion along the Houston Ship Channel; individual residential development; commercial real estate development; cities re-channeling streams; or other activities in wetlands, low-lying areas, and coastal areas.

The proposed amendments do not introduce additional regulatory requirements, and are intended to maximize the efficient use of resources at both agencies. There may be cost savings for the commission as a result of adopting the proposed amendments, but these are not considered to be significant.

#### PUBLIC BENEFIT AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be the maintenance of state water quality standards, the elimination of unnecessary duplication of effort for the review of permits, and the streamlining of the 401 certification process. Historically, there have been between 150 to 200 Corps permits per year subject to individual review by the commission.

The commission proposes these amendments in order to facilitate the implementation of the MOA with the Corps by revising procedures for waivers of certification, standardizing enforcement provisions, and clarifying existing language for consistency with other agency rules. The proposed amendments do not

change the type or number of activities subject to review under the existing rules.

The purpose of the MOA is to implement a process for interagency cooperation and review of individual 404 permit applications under the federal CWA, §401, while maintaining state water quality standards in §404 projects. Section 404 permits are issued by the Corps under the authority of the federal CWA, §404, which authorizes the discharge of dredged or fill material into the waters of the United States. This fill or dredged material may be used in such projects as marsh construction; new road construction by TxDOT; industrial expansion along the Houston Ship Channel; individual residential development; commercial real estate development; cities re-channeling streams; or other activities in wetlands, low-lying areas, and coastal areas. The proposed amendments will provide for substantial compliance with state water quality standards, provide for effective and efficient use of resources at both agencies, and the streamlining of the 401 certification process.

The MOA designates two tiers for 401 certification procedures. Tier 1 projects would include those that will result in a direct impact to three acres or less of water in the state including wetlands, or 1,500 linear feet or less of streams. Projects that impact certain types of rare or ecologically significant wetlands are not included in this tier.

If the applicant chooses to use Tier 1, a statement will be signed indicating that applicable requirements and a TNRCC checklist of best management practices (BMPs) will be satisfied. An applicant's election to incorporate the BMPs and other requirements allows a 404 permit application to proceed without further review by the TNRCC. The BMPs selected by the applicant and other provisions of the checklist become part of the 404 permit and are subject to enforcement.

For Tier II projects, the TNRCC will participate in the pre-application process to the maximum extent practicable and provide the Corps with specific comments on water quality impacts during the public notice comment period up until the issuance of the Corps' decision document. Water quality issues raised by the agency during the public comment period are to be incorporated into the decision document. This revised process eliminates duplicative reviews and raises issues early in the review process thereby reducing the potential for conflicting or inconsistent decisions from the Corps and TNRCC.

The proposed amendments do not introduce additional regulatory requirements, and are intended to maximize the efficient use of resources at both agencies. The TNRCC does not assess application fees for the review of 404 permits and no fees are proposed under this rulemaking. Therefore, any cost savings to applicants are not considered significant. However, applicants may realize reduced processing times and increased consistency in the certification process.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendments. The proposed amendments would maintain state water quality standards, eliminate unnecessary duplication of effort for the review of permits, and streamline the 401 certification process. However, applicants may realize reduced processing times and increased consistency in the certification process as a result of the rulemaking. Historically, there have been between 150 to 200 Corps permits per year subject to individual review by the TNRCC.

The commission proposes these amendments in order to facilitate the implementation of an MOA with the Corps by revising procedures for waivers of certification, standardizing enforcement provisions, and clarifying existing language for consistency with other agency rules. The proposed amendments do not change the type or number of activities subject to review under the existing rules.

The purpose of the MOA is to implement a process for interagency cooperation and review of individual 404 permit applications under the federal CWA, §401, while maintaining state water quality standards in §404 projects. Section 404 permits are issued by the Corps under the authority of the federal CWA, §404, which authorizes the discharge of dredged or fill material into the waters of the United States. This fill or dredged material may be used in such projects as marsh construction; new road construction by TxDOT; industrial expansion along the Houston Ship Channel; individual residential development; commercial real estate development; cities re-channeling streams; or other activities in wetlands, low-lying areas, and coastal areas. The proposed amendments will provide for substantial compliance with state water quality standards, provide for effective and efficient use of resources at both agencies, and the streamlining of the 401 certification process.

The MOA between the TNRCC and the Corps would designate two tiers for 401 certification procedures. Tier 1 projects would include those that will result in a direct impact to three acres or less of water in the state including wetlands, or 1500 linear feet or less of streams. Projects that impact certain types of rare or ecologically significant wetlands are not included in this tier.

If the applicant chooses to use Tier 1, a statement would be signed indicating that applicable requirements and a TNRCC checklist of BMPs will be satisfied. An applicant's election to incorporate the BMPs and other requirements allows a §404 permit application to proceed without further review by the TNRCC. The BMPs selected by the applicant and other provisions of the checklist become part of the 404 permit and are subject to enforcement.

For Tier II projects, the TNRCC will participate in the pre-application process to the maximum extent practicable and provide the Corps with specific comments on water quality impacts during the public notice comment period up until the issuance of the Corps' decision document. Water quality issues raised by the agency during the public comment period are to be incorporated into the decision document. This revised process eliminates duplicative reviews and raises issues early in the review process thereby reducing the potential for conflicting or inconsistent decisions from the Corps and TNRCC.

The proposed amendments do not introduce additional regulatory requirements, and are intended to maximize the efficient use of resources at both agencies. The TNRCC does not assess application fees for the review of 404 permits and no fees are proposed under this rulemaking. Therefore, any cost savings to applicants are not considered significant.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the rules and rule amendments is to protect the environment or reduce risks to human health from environmental exposure. The rule

amendments will not have an adverse material impact because the amendments only revise procedures for waivers of certification, amend enforcement provisions, and clarify existing language for consistency with other agency rules, and the amendments do not change the type or number of activities subject to review under the existing rules. Therefore, the proposed rule amendments do not meet the definition of a "major environmental rule." Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). The rules and rule amendments do not exceed a standard set by federal or state law; the rules as a whole do exceed the express requirements of state law, but the rules are specifically required by the federal CWA, §401, for any state agency that chooses to certify §401 permits; the rules and rule amendments do not exceed a requirement of a federal delegation agreement or a contract between the state and an agency or representative of the federal government to implement a state and federal program; and the rules and rule amendments are not adopted solely under the general powers of the agency, but rather under TWC, §§26.011, 26.023, 26.027, 26.121, and 26.127. The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed a preliminary assessment in accordance with Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the proposed amendments is to more effectively implement the MOA with the Corps regarding federal CWA, §401 provisions. The purpose of the MOA is to implement a process for interagency cooperation and TNRCC review of individual 404 permit applications under the CWA, §401. The proposed amendments would substantially advance this stated purpose by revising procedures for waivers of certification, amending enforcement provisions, and clarifying existing language for consistency with other commission rules.

Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed amendments do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, restrict, nor limit the owner's right to property, nor does it reduce a property's value by 25% or more beyond that which would otherwise exist in the absence of the amendments. Instead, the proposed amendments merely clarify existing language, revise procedures, and amend enforcement provisions of rules that have been in place for 13 years; rules that require an applicant for a federal wetlands discharge permit to demonstrate to the state that the discharge will not pollute water in the state. Consequently, the proposed amendments do not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed amendments are reasonably taken to fulfill the requirements of state law to control the quality of the state's water and will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals



and policies of the CMP be considered during the rulemaking process. The commission determined that the proposed action is consistent with the applicable CMP goals and policies.

The goals of the CMP in 31 TAC §501.12 applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of the Coastal Natural Resource Areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 5) to balance the benefits from economic development and multiple human uses of the coastal zone; the benefits from protecting, preserving, restoring, and enhancing CNRAs; the benefits from minimizing loss of human life and property; and the benefits from public access to and enjoyment of the coastal zone; and 7) to make agency and local government decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. Of the 18 policies contained in 30 TAC §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas, only one, (j) Dredging and Dredged Material Disposal and Placement, is applicable to these proposed rules.

The commission reviewed these rules for consistency with the goals and policies of the CMP mentioned previously, and determined that the rules are consistent with the intent of the five applicable goals and the one applicable policy, and will not result in any significant adverse effects to CNRAs. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals and policies because these rules implement provisions under TWC, §§26.011, 26.023, 26.027, 26.121, and 26.127, which direct the commission to act to protect the quality of water in the state. These rules amend procedures for public notice and the review of applications for water quality certification, which is consistent with the applicable goals and policies of the CMP. The commission seeks public comment on the consistency of the proposed rules with the CMP.

#### ANNOUNCEMENT OF PUBLIC MEETING

A public meeting on this proposal will be held in Austin on June 5, 2001, at 2:00 p.m. at the commission's central office located at 12100 Park 35 Circle, Building F, Room 2210. The meeting is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the meeting; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the meeting and will answer questions before and after the meeting.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-031-279-WT. Comments must be received by 5:00 p.m., June 5, 2001. For further information contact Alan Henderson, Policy and Regulations Division, at (512) 239-1510.

### 30 TAC §§279.1 - 279.13

#### STATUTORY AUTHORITY

The amendments and new section are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the 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; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. Chapter 279 governs the issuance of state water quality certifications under the federal CWA, §401, codified at 33 USC, §1341.

The amendments and new section implement provisions of TWC, including §26.011, which requires the commission to establish and control water quality in the state; §26.023, which requires the commission to establish water quality standards; §26.027, which grants the commission the authority to issue permits for discharges into water in the state; §26.121, which prohibits the unauthorized discharge of waste into water in the state; and §26.127, which designates the commission as the principal authority on matters relating to the quality of water in the state.

#### §279.1. General.

This chapter governs the issuance by the Texas Natural Resource Conservation Commission of state certifications [~~within the jurisdiction of the Texas Natural Resource Conservation Commission~~] as authorized by 33 United States Code, §1341, commonly known as [the Federal Water Pollution Control Act Amendments of 1972, and] the federal [Federal] Clean Water Act (CWA), §401. [~~The Federal Clean Water Act, §401(a)(1), requires that any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in any discharge into navigable waters of the United States, shall obtain from the state in which the discharge originates or will originate a certification that the discharge will comply with applicable provisions of 33 United States Code §§1311, 1312, 1313, 1316, and 1317 (the Federal Clean Water Act, §§208(e), 301, 302, 303, 306, and 307). The Federal Clean Water Act, §401(a)(1), further provides that the state shall establish procedures for public notice in the case of all applications for certification and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications.~~]

#### §279.2. Purpose and Policy.

(a) This chapter establishes procedures and criteria for applying for, [the application] processing, and reviewing [review of] state [water quality] certifications under CWA, §401, for activities under the jurisdiction of the agency [Texas Natural Resource Conservation Commission as required by the Federal Clean Water Act.] It is the purpose of this chapter, consistent with the Texas Water Code and the federal CWA [Federal Clean Water Act], to maintain the chemical, physical, and biological integrity of the state's waters.

(b) It is the policy of the commission [Commission] to achieve no overall net loss of the existing wetlands resource base with respect to wetlands functions and values in the State of Texas. All activities under the jurisdiction of the agency that [Texas Natural Resource Conservation Commission which] require a federal license or permit and that [which] may result in any discharge to waters of the United States are subject to review [will be reviewed ] for consistency with the federal CWA [Federal Clean Water Act] and the Texas Surface Water Quality Standards. After such a review, the agency [commission] shall:

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

(4) waive certification. The agency may condition the waiver of certification upon the agreement of an applicant to include and comply with specific water quality-related conditions in the applicant's federal permit. [~~for any activity which the Commission finds will result in no discharge, or which does not fall within the purview of the Commission's authority, or concerning which the Commission expressly waives its authority to act on a request for certification for other reasons.~~]

(c) The executive director is delegated the responsibility for performing all certification functions under this chapter on behalf of the commission, except that at the request of [~~a commissioner or~~] the executive director, the commission may review the question of certification prior to the executive director's determination on certification.

### §279.3. Definitions.

In addition to the terms defined in §3.2 of this title (relating to Definitions), the [The] following words and terms, when used in this chapter, shall have the following meanings[; unless the context clearly indicates otherwise].

(1) 401 Certification--A certification issued by the state [~~to assure that a federal permit or license is consistent with state law~~] as authorized under the federal CWA [Federal Clean Water Act], §401.

(2) (No change.)

(3) 404 Permit--A Department of the Army permit issued under the authority of the federal CWA [Federal Clean Water Act], §404, which authorizes the discharge of dredged or fill material into waters of the United States. [~~404 permits can be either individual, general, or by letter of permission. Individual 404 permits are only issued following a case-by-case evaluation of a specific structure or work in accordance with 33 Code of Federal Regulations, Part 325, a determination that the proposed structure or work is in the public interest pursuant to 33 Code of Federal Regulations, Part 320, and that the proposed action is consistent with 40 Code of Federal Regulations, Part 230 (§404(b)(1) Guidelines).~~]

(4) (No change.)

~~[(5) Affected person--Any person who is determined by the commission to have a legally justiciable interest that may be adversely affected by an action taken on a certification.]~~

(5) [(6)] Applicant--Any person who applies for any license or permit granted by an agency of the federal government to conduct any activity that [which] may result in any discharge into or adjacent to water [waters] in the state.

(6) [(7)] Aquatic Ecosystem--Water [Waters] in the state, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

(7) [(8)] Clean Water Act--33 United States Code, §§1251 - 1387 [§§1151, et seq], also known as [and] the federal Clean Water Act (CWA), §§101 - 607 [; et seq].

~~[(9) Commission--The Texas Natural Resource Conservation Commission, acting through the executive director pursuant to §279.2(e) of this title (relating to Purpose and Policy).]~~

(8) [(40)] Department of the Army Permits--All permits and licenses issued by the Department of the Army Corps of Engineers including 404 permits and permits issued under the authority of the Rivers and Harbors Act of 1899, §10.

(9) [(11)] Discharge--Deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of any pollutant, or to allow, permit, or suffer any of these acts or omissions.

(10) [(12)] District engineer--The Department of the Army representative responsible for administering, processing, and enforcing federal laws and regulations relating to the U.S. Army Corps of Engineers, including permitting.

(11) [(13)] Emergency--A condition either meeting the requirements of federal law as constituting an emergency or applicable provisions of §305.21 [§305.23] of this title (relating to Emergency Orders and Temporary Orders Authorized).

~~[(14) Executive director--The executive director of the Texas Natural Resource Conservation Commission.]~~

(12) [(15)] General permit--A permit issued [~~authorized~~] by a federal licensing or permitting agency on a regional basis. [~~General permits are designed to regulate with little delay or paperwork certain activities having minimal impacts.~~]

(13) [(16)] Individual permit--A permit that is issued by a federal licensing or permitting agency following an evaluation of any activity including, but not limited to, the construction or operation of a facility that [~~facilities which] may result in any discharge into waters of the United States.~~

(14) [(17)] Licensing or permitting agency--Any agency of the federal government to which application is made for any license or permit to conduct an activity that [which] may result in any discharge into or adjacent to water in the state.

(15) [(18)] Nationwide permit--A type of general permit authorized by a federal licensing or permitting agency [~~through publication in the "Federal Register"~~] that applies [is applicable] throughout the nation. [~~Nationwide permits are designed to regulate with little delay or paperwork certain activities having minimal impacts.~~]

(16) [(19)] National Pollutant Discharge Elimination System (NPDES) [NPDES] permit--A written document issued by the regional administrator of the EPA under [United States Environmental Protection Agency (EPA) as required by] the federal CWA [Federal Clean Water Act], §402, which authorizes the discharge of any pollutant, or combination of pollutants, into navigable waters of the United States.

~~[(20) Person--Any corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, individual, or other legal entity.]~~

(17) [(21)] Pollutant--Dredged [Any dredged] spoil, solid waste, incinerator residue, sewage, garbage, [refuse, oil,] sewage sludge, filter backwash, munitions, chemical wastes [hazardous waste], [hazardous substance, chemical waste,] biological materials [material], radioactive materials [substance], heat, wrecked or discarded equipment, rock, sand, cellar dirt, and [or] industrial, [recreational,] municipal, and agricultural[; or other] waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(18) [(22)] Practicable--Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(19) [(23)] Regional administrator--The administrator of the EPA [United States Environmental Agency], Region VI.

(20) [(24)] Water dependent activity--An activity that [which] is proposed for or adjacent to an aquatic site that requires

access, proximity to, or siting within an aquatic site to fulfill its basic purpose.

~~{(25) Water quality limited segment—Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by the Federal Clean Water Act, §301(b) and §306.}~~

(21) ~~{(26)}~~ Water Quality Standards--Texas Surface Water Quality Standards, Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

#### §279.4. Application for Certification.

(a) National Pollutant Discharge Elimination System (NPDES) ~~[NPDES]~~ permits. No person may conduct any activity under federal permit or license that ~~[which]~~ may result in any discharge into or adjacent to water ~~[waters]~~ in the state unless the person has received a certification or waiver under this chapter. The regional administrator or the permit applicant may submit a request for certification.

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

(b) Department of the Army permits. No person may conduct any activity under federal permit or license that ~~[which]~~ may result in any discharge into or adjacent to water ~~[waters]~~ in the state unless the person has received a certification or waiver under this chapter. The district engineer or the permit applicant may submit a request for certification.

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

(3) The executive director may elect to delay acting on a request for certification until after a review of a final ~~[preliminary]~~ permit decision document.

(c) Other federal licenses or permits. For those federal licenses or permits issued by federal agencies other than the EPA ~~[United States Environmental Protection Agency]~~ or the Department of the Army that ~~[which]~~ may result in any discharge into or adjacent to water ~~[waters]~~ in the state, the permittee must receive certification or waiver under this chapter prior to conducting any permitted activity.

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

(d) Review of application for certification. Where the executive director believes more information is required in order to accomplish the review of the request for certification, he shall notify the applicant or licensing or permitting agency and request the ~~[such]~~ information.

(e) Submission of additional materials. The applicant shall submit in timely fashion, at any time during the review process, additional materials that ~~[which]~~ the executive director finds to be necessary for review of the application. In no case will the applicant have less than 30 days to submit the information.

#### §279.5. Notice of Application.

(a) The executive director to the greatest extent practicable shall use [utilize] a joint mailed notice issued by the ~~[Department of the Army, or the United States Environmental Protection Agency, or other]~~ licensing or permitting ~~[permit]~~ agency ~~[after agreements with those agencies have been reached regarding the content of the notice and the persons entitled to notice in Texas.]~~

(b) If a joint notice is not used ~~[utilized]~~ as provided in subsection (a) of this section and the executive director finds that all necessary materials have been received, the executive director ~~[he]~~ shall mail notice of the application for certification to:

(1)-(7) (No change.)

(8) the EPA ~~[United States Environmental Protection Agency]~~, Region 6;

(9) (No change.)

(10) the Secretary of the Coastal Coordination Council; and

~~{(11) any known interested persons; and}~~

(11) ~~{(12)}~~ the applicant.

(c) Any public notice issued under subsection (b) of this section shall contain:

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

(3) a statement that the applicant is seeking certification under the federal CWA ~~[Federal Clean Water Act]~~, §401;

(4) a statement that any comments concerning the application may be submitted to the executive director of the agency ~~[Texas Natural Resource Conservation Commission]~~, Attention 401 Coordinator, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, and a deadline for written public comment of no less than 30 days;

(5) (No change.)

(6) a statement indicating how ~~[affected]~~ persons can request a public meeting ~~[hearing]~~.

(d) The executive director may waive notice requirements of this section when it is determined that a certification will be waived.

(e) ~~{(4)}~~ The executive director may waive notice and meeting ~~[hearing]~~ requirements of this section ~~[subsection]~~ and §§279.6 - 279.8 of this title (relating to Public Comments, ~~[Nonadjudicated]~~ Public Meetings ~~[Hearings]~~, and Notice of Public Meeting ~~[Hearing]~~) and issue a final agency ~~[commission]~~ action in accordance with ~~[pursuant to]~~ §§279.10 - 279.12 of this title (relating to Final Agency Action ~~[Commission]~~ on National Pollutant Discharge Elimination System (NPDES) ~~[NPDES]~~ Permits, Final Agency ~~[Commission]~~ Action on ~~[the]~~ Department of the Army Permits ~~[and Other Permits]~~, and Other State Certification) when an emergency as defined in §279.3 of this title (relating to Definitions) has been determined to exist and it is in the public interest to issue ~~[provide]~~ a certification decision in less than 30 days.

#### §279.6. Public Comments.

The executive director shall consider all comments related to the impacts of the proposed activity received ~~[submitted]~~ in accordance with these rules for permit applications subject to review, unless a public notice has been waived under §279.5(d) or (e) of this title (relating to Notice of Application).

#### §279.7. ~~[Nonadjudicated]~~ Public Meetings ~~[Hearings]~~.

(a) The executive director may conduct a ~~[nonadjudicative]~~ public meeting ~~[comment hearing]~~ on any application for 401 certification if the executive director determines, based on public comment received during the public comment period, that such a meeting ~~[hearing]~~ would be appropriate ~~[or if such a hearing is requested by any affected person in writing within 30 days after the publication of notice of application]~~. The executive director shall conduct a ~~[nonadjudicative]~~ public meeting ~~[comment hearing]~~ on an application for 401 certification if a request for such a meeting ~~[hearing]~~ is made by a commissioner ~~[Commissioner]~~. ~~[The written request shall contain the following information:]~~

~~{(1) the name, mailing address, and phone number of the person making the request;}~~

{(2) the application number or other recognizable reference to the application;}

{(3) a brief description of the interest of the requestor, or of persons represented by the requestor; and}

{(4) a brief description of how the application, if granted, would adversely affect such interest.}

(b) If a public meeting [hearing] is held, the executive director shall notify the licensing and permitting agency and request an extension of time to consider the certification. [regional administrator in the case of an NPDES permit certification or the district engineer in the case of a Department of the Army permit certification or the designated department of any other licensing or permitting agency, giving an estimate of the additional time necessary to consider the certification, and stating that the executive director is not waiving certification.]

(c) All meetings [hearings] held under this section shall be conducted by a representative of the executive director. The [Such] representative shall receive comments concerning all matters affecting the 401 certification.

(d) (No change.)

#### §279.8. Notice of [Nonadjudicated] Public Meeting [Hearing].

(a) The executive director shall notify the applicant not less than ten [30] days before the date set for meeting [hearing] that a [non-adjudicative] public meeting [hearing] will be held on the application. The [Such] notice shall be by certified mail, return receipt requested.

(b) The [Such] notice of meeting [hearing] shall identify the application; the date; time; place and nature of the meeting [hearing]; the legal authority and jurisdiction under which the meeting [hearing] is to be held; the proposed action; the requirements for submitting written comments; the method for obtaining additional information; and [such] other information as the executive director deems necessary.

(c) The executive director will transmit the notice by first-class mail or by personal service to:

(1) (No change.)

(2) the mayor and health authorities of the city or town in which the activity is or will be located or in which pollutants will be discharged [waste is or will be disposed of];

(3) the county judge and health authorities of the county in which the activity is or will be [facility is] located or in which pollutants will be discharged [waste is or will be disposed of];

(4)-(7) (No change.)

(8) the EPA [United States Environmental Protection Agency], Region 6;

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

(11) any person from whom written comment was received during the comment period, provided that the comment included a legible mailing address for the commenter [known interested persons].

(d) The date of mailing the [such] notice of meeting [hearing] shall be at least ten [30] days before the date set for the meeting [such hearing].

#### §279.9. Executive Director Review of Water Quality Certification Application.

(a) The executive director shall conduct a review or waive certification.

(b) If the executive director conducts a review, the [The] executive director shall, after the review and any public meeting held on the application, determine whether the proposed activity will:

(1) result in any discharge;

(2) result in any violation of 33 United States Code, §§1311, 1312, 1313, 1316, or 1317 [the Federal Clean Water Act, and the criteria in §279.11(e) of this title (relating to Final Commission Action on Department of the Army Permits) for 404 permits];

(3) result in any violation of applicable water quality standards; or

(4) result in any violation of any other appropriate requirements of state law.

#### §279.10. Final Agency [Commission] Action on National Pollutant Discharge Elimination System (NPDES) [NPDES] Permits.

(a) The executive director shall issue a final determination within 60 days from the date the draft permit is mailed by the Regional Administrator, EPA [United States Environmental Protection Agency], as required by 40 Code of Federal Regulations §124.53, unless the executive director in consultation with the Regional Administrator finds that unusual circumstances require a longer time. The executive director shall send notice of the decision to deny, grant, grant conditionally, or waive the certification, and a copy of the certification (if granted), [including a copy of the certification,] to the applicant, the regional administrator, and any person so requesting [of the decision to deny, grant, grant conditionally or waive the certification]. The [Such] notification shall be in writing and shall include:

(1) (No change.)

(2) conditions that [which] are necessary to assure compliance with the applicable provisions of the federal CWA [Federal Clean Water Act], §§208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of state law;

(3) when the agency [state] certifies a draft permit instead of a permit application, any condition required to assure compliance with the provisions of the federal CWA [Federal Clean Water Act], §§208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of state law shall be identified citing the federal CWA [Federal Clean Water Act] or state statutes [law references] upon which that condition is based[. Failure to provide such a citation waives the right to certify with respect to that condition]; and

(4) a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including water quality standards. [Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the United States Environmental Protection Agency permit issuance process.]

(b) (No change.)

#### §279.11. Final Agency [Commission] Action on Department of the Army Permits.

(a) The executive director shall review or waive certification of any [all] permit application in accordance [applications for consistency] with §279.9 of this title (relating to Executive Director Review of Water Quality Certification). When an application is reviewed, the executive director [and] shall take [issue a] final action [determination] within 60 days after receiving the [receipt of a] certification request from the U.S. Army Corps of Engineers (Corps) [district engineer] as required by 33 Code of Federal Regulations, §325.2(b) unless the executive director, in consultation with the Corps [district engineer], determines a shorter or longer period is reasonable.

(b) (No change.)

(c) If the [The] executive director reviews a [shall review all] request for certification of a 404 permit activity, the review shall be performed [activities] using the following criteria.

(1) No discharge shall be certified if there is a practicable alternative to the proposed discharge that [which] would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities that [which] are not water dependent are presumed to have a practicable alternative [alternatives], unless the applicant [clearly] demonstrates otherwise. For the purposes of this section compensatory mitigation is not considered an alternative.

(2) No discharge of dredged or fill material shall be certified unless appropriate and practicable steps have been taken that [which] will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

(3) Certification shall require appropriate and practicable compensatory mitigation for all unavoidable adverse impacts that [which] remain after all practicable avoidance and minimization has been completed. Compensatory mitigation requirements will provide for a replacement of impacted functions and values.

(4) If the executive director determines that [There may be circumstances where] the impacts of the project are so significant that the proposed compensatory mitigation will not accomplish the purpose and policy of this chapter [even if alternatives are not available], certification may be denied even if an alternative is not available [regardless of the compensatory mitigation proposed].

(d) The executive director shall send notice of the decision to deny, grant, grant conditionally, or waive certification, including a copy of the certification decision, to the applicant, the Corps [district engineer], the designated contact of any other licensing or permitting agency, and any person so requesting [of the decision to deny, grant, grant conditionally or waive certification]. The [Such] notification shall be in writing and shall include:

(1) (No change.)

~~{(2) a statement that the executive director:~~

~~{(A) examined the complete application, specifically identifying the number or code affixed to such application, and based its determination upon an evaluation of the information contained in the application which is relevant to the 404 certification; and/or}~~

~~{(B) examined other information, sufficient to enable the executive director to reach the decision;}~~

(2) ~~{(3)}~~ if certification is granted or denied, a statement of the basis for the executive director's decision, including a description of the materials and information examined during the executive director's review. The statement shall include:

~~{(A) if a waiver of certification is made, a statement explaining the determination that no discharge will result from the activity, or that the activity does not fall within the jurisdiction of the Commission's authority, or the Commission expressly waives its authority to act on a request for certification for other reasons; or}~~

(A) ~~{(B)}~~ if the activity is certified [a certification or conditional certification is made]:

(i) a statement that there is a reasonable assurance the activity, if [will be] conducted in accordance with the terms of the proposed permit, [a manner which] will not violate the criteria enumerated in §279.9 of this title; or

(ii) a statement of conditions, including any monitoring and reporting requirements[, which are] necessary to assure compliance with the criteria enumerated in §279.9 of this title;

(B) ~~{(C)}~~ if [a denial of] certification is denied, an explanation of how [made, a statement explaining why] the proposed activity will not satisfy one or more of [result in the unacceptable discharge of pollutants into or adjacent to waters in the state and detailing] the criteria enumerated in §279.9 of this title [which will be violated].

#### §279.12. Other State Certification.

(a) Nationwide Permit Certification.

(1) The executive director shall consider all proposed nationwide permits for certification for activities that [which] may result in any discharge into or adjacent to water [waters] in the state consistent with §279.9 of this title (relating to Executive Director Review of Water Quality Certification Application). Water quality certification [Quality Certification] for activities authorized under a nationwide permit is complete at the time the permit is issued. No additional certification is required for activities authorized under that nationwide permit.

(2) When a federal licensing or permitting agency proposes a nationwide permit for an activity that [which] may result in a discharge, the executive director shall notify:

(A) (No change.)

(B) the Texas Water Development Board; and

(C) the Texas General Land Office; ~~{}~~

~~{(D) any other appropriate person;}~~

~~{(E) any person who requests to be put on the mailing list; and}~~

~~{(F) any other appropriate person.}~~

(3) After considering public comments received in accordance with §279.5 of this title (relating to Notice of Application) and other information, the executive director shall grant, grant conditionally, deny, or waive certification.

(4) The executive director shall maintain a list of all applicable [certifications of] nationwide permits and the executive director's certification action on each one [granted or granted conditionally].

(b) General Permit Certification.

(1) The executive director shall consider all proposed general permits for certification for activities that [which] may result in any discharge into or adjacent to water [waters] in the state consistent with §279.9 of this title [(relating to Executive Director Review of Water Quality Certification Application)]. Water quality certification [Quality Certification] for activities authorized under a general permit is complete at the time the permit is issued. No additional certification is required for activities authorized under that general permit.

(2) When a federal licensing or permitting agency proposes a general permit for an activity that [which] may result in a discharge, the executive director shall notify:

(A) (No change.)

(B) the Texas Water Development Board; and

(C) the Texas General Land Office; ~~{}~~

~~{(D) any other appropriate person;}~~

~~{(E) any person who requests to be put on the mailing list; and}~~

~~{(F) any other appropriate person.}~~

(3) After considering public comments received in accordance with §279.5 of this title (relating to Notice of Application) and other information, the executive director shall grant, grant conditionally, deny, or waive certification.

(4) The executive director shall maintain a list of all applicable [certifications of all] general permits and the executive director's certification action taken on each one [granted or granted conditionally].

(c) Final Action on Other Certification.

[(1)] The executive director shall send notice of the decision to deny, grant, grant conditionally, or waive certification, including a copy of the certification if granted, to the applicant, the designated contact of the licensing or permitting agency, and any person so requesting [of the decision to deny, grant, grant conditionally or waive certification]. The [Such] notification shall be in writing and shall include:

(1) [(A)] the name and address of the applicant;

(2) [(B)] if certification is either granted or denied, a statement of the basis for [that] the executive director's decision, including a description of the materials and information examined during the executive director's review. The statement shall include [director has either]:

(A) if the activity is certified;

(i) a statement that there is a reasonable assurance the activity, if conducted according to the terms of the proposed permit, will not violate the criteria enumerated in §279.9 of this title; or [examined the complete application, specifically identifying the number or code affixed to such application, and based on its determination upon an evaluation of the information contained in the application which is relevant to the 401 certification; and/or]

(ii) a statement of conditions, including any monitoring and reporting requirements, necessary to assure compliance with the criteria enumerated in §279.9 of this title [examined other information furnished by the applicant or provided in a nonadjudicative public hearing, sufficient to permit the executive director to reach the decision];

(B) if certification is denied, an explanation of how the proposed activity will not satisfy one or more of the criteria enumerated in §279.9 of this title.

[(C)] a statement of basis for the executive director's decision;

[(i)] if a waiver of certification is made, a statement explaining the determination that no discharge will result from the activity, or that the activity does not fall within the jurisdiction of the Commission's authority, or the Commission expressly waives its authority to act on a request for certification for other reasons; or]

[(ii)] if a grant or conditional grant of certification is made;

[(I)] a statement that there is a reasonable assurance the activity will be conducted in a manner which will not violate the criteria enumerated in §279.9 of this title; or]

[(II)] a statement of conditions which the executive director deems necessary with respect to the discharge, including any necessary monitoring requirements to assure the discharge will not violate applicable water quality standards;]

[(iii)] if a denial of certification is made, a statement explaining why the activity will result in the unacceptable discharge of

pollutants into or adjacent to waters in the state and detailing the criteria enumerated in §279.9 of this title which will be violated.]

[(2) After considering public comments and other information the executive director shall grant, grant conditionally, deny or waive certification.]

§279.13. Enforcement.

Applicants whose activities are certified or conditionally certified by the executive director, or for whose activities the executive director waives certification or takes no certification action based upon the applicant's agreement to include permit terms or conditions in the federal permit, shall comply with all terms and conditions of the permit as issued by the federal agency and as thereafter amended. Violation of the agreement to include permit terms or conditions, or violation of any term or condition of a permit relating to water quality shall constitute a violation of this rule. The commission may enforce such a violation under TWC, Chapter 7, and Chapter 70 of this title (relating to Enforcement).

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102301

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 239-0348



30 TAC §279.13

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the 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; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. Chapter 279 governs the issuance of state water quality certifications under the federal CWA, §401, codified at 33 USC, §1341.

The repeal implements provisions of TWC, including §26.011, which requires the commission to establish and control water quality in the state; §26.023, which requires the commission to establish water quality standards; §26.027, which grants the commission the authority to issue permits for discharges into water in the state; §26.121, which prohibits the unauthorized discharge of waste into water in the state; and §26.127, which designates the commission as the principal authority on matters relating to the quality of water in the state.

§279.13. Enforcement.

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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Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348



## CHAPTER 322. COMMUNITY WASTEWATER PLANNING

### 30 TAC §§322.1 - 322.6

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

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of Chapter 322, Community Wastewater Planning, including §322.1, Definitions; §322.2, Scope and Applicability; §322.3, Municipality Request for Implementation of a Regional Plan; §322.4, Application Requirements; §322.5, Notification; and §322.6, Commission Consideration of Regional Plans. The purpose of the repeal is to remove ineffective and unused rules.

The commission also is proposing, in concurrent action, the review of the rules in Chapter 322 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The proposed notice of review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

The commission originally proposed to readopt Chapter 322 in the rules review notice published in the October 20, 2000, issue of the *Texas Register* (25 TexReg 10572) because the chapter provides a mechanism for municipalities to implement a regional wastewater plan. The commission believed this mechanism would advance the policy of the state to encourage and promote the development and use of regional and area-wide wastewater systems (see, e.g., Texas Water Code, §26.003 and §26.081). However, upon further reflection the commission concludes that the rules in this chapter have not proven to be an effective mechanism for promoting regionalization and also believes the rules are unnecessary because there are other more effective mechanisms for promoting regionalization already in place. Chapter 322 was originally adopted in response to a request from the City of Houston to assist in implementing its long-term wastewater regional plan. In the years since its adoption in 1992, neither the City of Houston, nor any other municipality has asked the TNRCC to use the authority under this chapter. During the comment period for the rules review that was published in the October 20, 2000, issue of the *Texas Register*, the commission received one comment. That comment, submitted on behalf of Travis County Water Control and Improvement

District No. 17 (District 17), urged the TNRCC to expand the scope of the rules to require the TNRCC to follow regional plans adopted by districts, as well as those adopted by municipalities. Prior to this, in 1998, the commission denied District 17's petition for rulemaking that made the same request.

The commission is committed to promoting the development and use of regional and area-wide wastewater systems as required by the Texas Water Code. For example, in accordance with Texas Water Code, §26.027, and 30 TAC Chapter 305, the TNRCC executive director has revised the wastewater permit application to require applicants to submit detailed explanations regarding whether there is a wastewater treatment and collection system, within three miles of the area to be serviced by the proposed facility, that is willing and able to service the area and, if so, an economic justification as to why the applicant is pursuing a permit rather than connecting to the existing system. Furthermore, Texas Water Code, Chapter 13, Subchapter G, Certificates of Convenience and Necessity, allows districts to apply for certificates of convenience and necessity (CCNs), although districts are not required to obtain such a certificate. The commission has adopted a detailed policy statement and rules that address regionalization through the CCN process (see 30 TAC §291.102(b), effective October 19, 2000). Regionalization for districts and other entities is available through this process, as well as through the process set forth in Texas Water Code, Chapter 26, Subchapter C, Regional and Area-wide Systems, to promote regional and area-wide waste collection, treatment, and disposal systems. For these reasons, rather than readopt ineffective and unused rules, the commission proposes the repeal of Chapter 322.

### SECTION BY SECTION DISCUSSION

Section 322.1, Definitions; §322.2, Scope and Applicability; §322.3, Municipality Request for Implementation of a Regional Plan; §322.4, Application Requirements; §322.5, Notification; and §322.6, Commission Consideration of Regional Plans are proposed for repeal because the rules are ineffective and unused.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period after the proposed repeal of this chapter, there will be no significant implications for units of state and local government as a result of the repeal.

This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. However, the chapter has proven to be an ineffective mechanism for promoting regionalization. In the years since its adoption in 1992, no municipality has asked the TNRCC to use the authority under this chapter.

### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years after the proposed repeal of this chapter, the public benefit anticipated from the repeal will be removal of ineffective and unused rules promulgated under this chapter.

This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. No significant fiscal implications are anticipated to any person or business as a result of repealing the provisions of this chapter because it has not been used since

adopted in 1992. There are no known individuals or businesses that would be affected by this rulemaking.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated to any small or micro-business as a result of repealing the provisions of this chapter because this chapter has not been used since adopted in 1992. This chapter was originally adopted as a mechanism for municipalities to implement a regional wastewater plan to promote the state policy of regionalization. There are no known small or micro-businesses that would be affected by this rulemaking.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because the proposed repeal of Chapter 322 would not result in a rule which meets the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is to repeal ineffective and unused rules, and does not add regulatory requirements to existing rules, the rulemaking is not anticipated to have an adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, this repeal is not intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, this rulemaking does not meet the definition of a "major environmental rule." In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking is proposed specifically to repeal ineffective and unused rules and does not meet any of these four criteria of a "major environmental rule." The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed repeal and performed a preliminary assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to repeal Chapter 322 because the rules are ineffective and unused. Adoption of the repeal would not affect private real property, restrict or limit the owner's right to property that otherwise would exist in the absence of the rulemaking, or be the producing cause of the reduction in the market value of private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking that will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, because the Chapter 322 rules concern commission consideration of regional plans when evaluating domestic wastewater discharge permit applications. Therefore, applicable goals and policies of the Texas Coastal Management Program (CMP) must be considered during the rulemaking process. The commission reviewed the proposed repeal for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the goals and policies of the CMP. Because the proposed action would repeal unused and ineffective rules, it will not have direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP. The commission is accepting public comments in regards to this CMP consistency determination.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-039-322-WT. Comments must be received by 5:00 p.m., June 4, 2001. For further information, please contact Jill Burditt, Regulation Development Section, at (512) 239-0560.

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of the TWC and other laws of this state. The repeals are proposed as a result of a rule review done in accordance with the requirements of Texas Government Code, §2001.039, and in accordance with the requirements of the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for re-adoption each of their rules every four years.

The proposed repeals implement TWC, §5.102, General Powers, and §5.103, Rules.

§322.1. *Definitions.*

§322.2. *Scope and Applicability.*

§322.3. *Municipality Request for Implementation of a Regional Plan.*

§322.4. *Application Requirements.*

§322.5. *Notification.*

§322.6. *Commission Consideration of Regional Plans.*

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102304

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-5017





# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 4. SCHOOL LAND BOARD

### CHAPTER 155. LAND RESOURCES

#### SUBCHAPTER A. COASTAL PUBLIC LANDS

##### 31 TAC §155.1, §155.3

The School Land Board (Board) proposes amendments to §155.1, relating to General Provisions, and §155.3, relating to Easements. These amendments are primarily intended to streamline the process by which projects on coastal public land are authorized.

Section 155.1 is amended, first, to remove general coastal easements as a method of authorizing minor projects on coastal public land. It is replaced by provisions in §155.3, relating to Easements, that give the Commissioner of the General Land Office the authority to approve certain types of residential projects without Board authorization. Second, definitions for sensitive habitat and mitigation sequence are added. These are technical terms that appear in the chapter, but were not previously defined in the rule. In addition, the definition of the term "fill" is substituted for the term "landfill" and the definition modified to make it more accurately reflect the activity. Finally, this section is amended to include the provision that allows the Board to delay a decision on an application to consider comments from the public on a required Corps of Engineers permit. This provision currently applies only to easements. However, Corps permits may also be required on projects that require a lease or a permit. Consequently, incorporating it into the general provisions makes it applicable to all forms of authorization covered by this chapter.

The proposed amendments to §155.3, relating to Easements, first, delete the language from the rule that duplicates the statutory provisions. The most significant change to the rule, however, is that it allows the Commissioner of the General Land Office the authority to grant easements for existing residential structures and proposed residential structures that have minor environmental impacts or no impacts at all. The authorization process for such projects will be expedited by no longer requiring Board approval. In addition, it will allow the Board to focus their limited time on commercial projects and other large-scale projects. The proposed amendments also include a list of factors the Board or the Commissioner shall consider when making decisions on an application, including a mitigation sequence that applicants must consider and apply to projects that may have an adverse impact on coastal natural resources. Finally, the proposed amendments delete any superfluous language from the rule and, when appropriate, reorganize subsections to make the rule more readable and easier to follow.

Rene Truan, Deputy Commissioner of the Asset Inspection Division, has determined that for the first five-year period these rules are in effect the fiscal implications for the state or local government as a result of enforcing or administering these rules will be a reduction in the effort required by the state to authorize residential projects. This will in turn reduce the cost of administering the Coastal Easement program and allow staff to concentrate on projects with greater impact to coastal public lands.

Mr. Truan has also determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of implementing these rules will be a reduction in the time and effort

required to obtain authorization for certain projects on coastal public land. Mr. Truan has determined that there will be no adverse economic impact to small businesses or individuals.

The proposed amendments to §155.1 and §155.3 are subject to the Texas Coastal Management Program (CMP) §505.11(a)(1)(F) of this title, relating to Actions and Rules Subject to the CMP and must be consistent with the applicable goals and policies under §501.14(h) of this title, relating to Development in Critical Areas, §501.14(i) of this title, relating to Construction of Waterfront Facilities and Other Structures on Submerged Lands, and §501.14(j) of this title, relating to Dredging and Dredged Material Disposal and Placement. The General Land Office reviewed these proposed rules for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The General Land Office has determined that the proposed rules are consistent with the applicable CMP goals and policies.

Comments may be submitted in writing to Melinda Tracy, Legal Services Division, General Land Office, P.O. Box 12873, Austin, Texas 78711, by no later than 30 days from the date of publication.

The General Land Office has prepared a takings impact assessment for the adoption of these amendments and has determined that adoption of these amendments will not result in the taking of private real property. To receive and copy of the takings impact assessment, please send a written request to Ms. Tracy.

These amendments are proposed under Texas Natural Resources Code Chapter 33, §33.064 which authorizes the Board to adopt procedural and substantive rules necessary for the management of coastal public lands.

Texas Natural Resources Code §33.111 is affected by the proposed amendments.

##### §155.1. General Provisions.

(a) (No change.)

(b) Scope of rules. These rules set forth the practice and procedure for administration by the board in granting a lease, easement, permit, and the registration of a structure on coastal public lands. All grants of interest are subject to these rules and regulations. The board may grant the following interest in coastal public lands for the indicated purposes:

(1) (No change.)

(2) easements for purposes connected with ownership of littoral property:

~~{(A) a general coastal easement may be approved by the board under which projects with minor or negligible natural resource impacts may be authorized; }~~

~~{(B) approval or authorization of minor projects provided above may be evidenced by the issuance of a letter of authorization by the board or the commissioner in the manner provided in §155.3 of this title (relating to Easements); }~~

~~{(C) general coastal easements and letters of authorization may contain special conditions determined by the board to be necessary or appropriate to protect natural resources; }~~

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

(c) If a Department of the Army Corps of Engineers permit is required for a proposed project, the board may postpone a decision on

the application pending receipt of comments on the work described in the Corps of Engineers public notice.

(d) [(e)] Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The School Land Board of Texas.

(2) Breakwater--A structure of timber, cement, or other material, either fixed or floating, designed to protect beaches and harbor areas from wave action.

(3) Bulkhead and riprap--Structures of timber, steel, concrete, rock, or similar substance erected parallel to the shoreline for erosion control purposes.

(4) Coastal area--Refers to the geographic area comprising all the counties of Texas having any tidewater shoreline including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(5) Coastal public lands--All or any portion of the state-owned submerged lands, the waters overlying those lands, and all state-owned islands in coastal area.

(6) Commercial structure--Any structure located on coastal public lands which is used directly for the sale of goods, wares, services on or property of any kind and includes any structure on coastal public lands adjacent to littoral property used commercially when said structure is used in conjunction with adjacent littoral commercial property.

(7) Sensitive habitat--An area of submerged or emergent vegetation or reefs.

(8) [(7)] Commissioner--The commissioner of the General Land Office.

(9) [(8)] Dredged material disposal--The deposition of sand, gravel, shell, or other material generated by a dredging activity onto coastal public lands.

(10) [(9)] Dredging--The moving of soil, sand, gravel, shell or other materials from its natural setting and thereby artificially altering the water depth, e.g., channels, basins, etc.

(11) [(10)] Island--Any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging of other operations.

(12) [(11)] Jetties and groins--Structures of rock, concrete, steel, or other material designed to modify or control sediment[sand] movement along a shore.

(13) [(12)] Fill[Landfill]--The deposition[filling and erection of dry upland by the depositing] of soil, sand, gravel, shell, or any[and] other materials on coastal public lands[ contiguous to littoral property, or the artificial alteration of waters levels for land reclamation purposes].

(14) [(13)] Littoral owner--The owner or leaseholder of any public or private upland bordered by or contiguous to coastal public lands.

(15) [(14)] Marina--A combination of docks or piers floating or constructed on pilings, extending onto or over coastal public lands, which is used for purposes of storing or docking boats, pleasure crafts, shrimp boats, and similar structures and is available to the public and charges are made for any of its services, and which do not constitute wharves, docks, or piers as hereinafter defined.

(16) Mitigation sequence--The series of steps which must be taken if sensitive areas are adversely affected.

(17) [(15)] Person--Any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

(18) [(16)] Pier and dock--Structures of timber or other material built onto or over coastal public lands which are used for fishing and recreational boating purposes and which do not constitute a wharf or marina as hereinbefore defined.

(19) [(17)] Seaward--The direction away from the shore and toward the body of water bounded by such shore.

(20) [(18)] Structure--Any structure, work, or improvement constructed upon, affixed to, or worked upon coastal public lands, including but not limited to, fixed to or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(21) [(19)] Submerged lands--Any land extending from the boundary between the lands of the state and littoral owners seaward to the low water mark on any salt water lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath such a body of water, but (for the purposes of these rules only) excludes beaches bordering on, and the waters of, the open Gulf of Mexico, and the lands lying beneath such waters.

(22) [(20)] Waste and/or garbage--Includes discarded food, refuse, and unwanted man-made degradable and non-degradable items such as containers, equipment, and other rubbish.

(23) [(21)] Wharf--A structure of timber, cement, masonry, earth, or other material built onto or over coastal public lands, so that vessels can receive and discharge cargo, products, goods, any paying passengers, etc. This definition applies only to structures or portions thereof which are directly connected with and used for the loading and unloading of water borne commerce but specifically excludes such structures used only for commercial fishing purposes.

(e) [(d)] Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16 of this title, such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control.

#### §155.3. Easements.

(a) Any easement granted to a littoral owner [Littoral owner. The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public lands for purposes connected with the ownership of littoral property. The granting of an easement pursuant to this rule, including the waiver below,] will not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property. [The owner of littoral property may construct a pier which is not for commercial purposes, which does not exceed 100 feet in length nor 25 feet in width, and which requires no filling or dredging, without obtaining an easement from the board; however, the location and dimensions of

any pier must be registered with the board as provided in §155.5 of this title (relating to Registration of Structures).]

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

~~[(d) Texas Department of Transportation. The board may grant an easement according to these rules to the Texas Department of Transportation; however, each such easement will be negotiated on a case-by-case basis.]~~

~~[(d) [(e)] Application. An applicant desiring an easement must submit an application to the General Land Office on forms approved by the General Land Office, not less than 30 days prior to the desired approval date. If shoreline alteration is proposed, a survey plat and field notes may be required. In addition to submitting an application form, applicants are encouraged to present reasons why the easement should be granted. It is the responsibility of the applicant to demonstrate affirmatively that the proposed structure is in the public interest. The board may request any additional information it deems necessary. [A nonrefundable filing fee made payable to the General Land Office must accompany each application.]~~

~~(e) [(f)] Consideration of application.~~

~~[(1) Upon receipt of a complete application form and additional information requested by the board, the board may circulate it for review and comment to any member agency of the interagency council on Natural Resources and the Environment.]~~

~~[(2) If a Department of the Army Corps of Engineers permit is required for the proposed work, the board may postpone a decision on the easement application pending receipt of comments on the work described in the Corps of Engineers public notice.]~~

~~(1) [(3)] Unless otherwise authorized by these sections, the board will hold a meeting to evaluate, consider, and hear testimony on an application. Upon receipt of an application and all requested information, the board may issue, deny, or issue with qualifications, an easement[ contract].~~

~~[(4) The decision on an application for an easement which requires the payment of fees that do not exceed \$600 per year, which proposes no new dredging or filling, and to which there are no written objections, and in which there is no commercial/industrial activity, may be made by the commissioner or any staff member he designates without a meeting of the board.]~~

~~(2) [(5)] Upon receipt of all necessary application information, the board or[-] the commissioner, as provided by subsection (f) of this section [or a staff member designated under paragraph (4) of this subsection], may issue, deny, or issue with qualifications, an easement contract.~~

~~(f) The commissioner may approve an easement application without board approval if the application is for any of the following activities but not for commercial/industrial activity and is consistent with the criteria for decision as set forth below in subsection (g) of this section:~~

~~(1) existing fill and associated bulkhead, riprap, dredged areas, groins, breakwaters, or other similar existing projects;~~

~~(2) existing piers, docks, boatlifts, or other similar existing projects;~~

~~(3) proposed piers, docks, boatlifts, or other similar projects provided such projects have been determined by the Land Office staff to have minimal unavoidable environmental impacts;~~

~~(4) proposed fill and associated riprap or bulkheads provided such fill impacts less than two hundred (200) square feet;~~

(5) proposed riprap which impacts the minimum amount of coastal public land to prevent erosion;

(6) renewals or assignments of previously approved projects provided the project has not been altered; or

(7) habitat creation not associated with another project on coastal public land.

~~(g) Criteria for decision. [An application for an easement on coastal public lands will be reviewed to insure conformity with the policies, practices, and procedures in these rules.] Project proposals will be evaluated in accordance with the following factors [guidelines].~~

(1) Fill projects for the sole purpose of land reclamation will not be approved; and

(2) Any project that is determined by the board or the commissioner as unsafe or contrary to the established policies of the board and/or the Land Office will not be approved.

(3) [(4)] Adverse impacts to coastal natural resource areas [resources] must be avoided to the extent practicable and minimized where unavoidable. Applicants may be required to provide appropriate mitigation, as set forth in subsection (b) of this section, for those impacts which are unavoidable. Where impacts to coastal natural resource areas are minimal, the payment of a resource impact fee may be required in lieu of undertaking a physical mitigation project where such project is not practicable.

(4) [(2)] Docks and piers.

(A) Piers and docks will be limited to the minimum size necessary to serve the purpose of the project and will be constructed in a manner that does not interfere with navigation or other authorized uses.

(B) Piers and docks will be designed and constructed in a manner that avoids existing marshes, oyster reefs, seagrass vegetation or shallow water capable of supporting these habitats to the extent practicable. Impacts to sensitive habitats that cannot be avoided will be minimized to the extent practicable.

(C) When constructed for private/residential use [private/residential use], only one pier or dock, with normal appurtenances, may extend from each defined parcel of littoral property. A pier or dock shall extend perpendicular from a point on the shoreline which is not less than ten feet from the adjacent littoral owner's property line, unless such a design would obstruct navigation or would unreasonably interfere with an adjoining littoral property owner's use of the waterfront.

(5) [(3)] Dredged areas.

(A) Propwashing is an unacceptable method of dredging and will not be approved.

(B) Projects shall be limited [are to be designed and constructed] to the minimum size necessary to serve the project purpose. Joint use of access channels by multiple littoral property owners is preferred and encouraged rather than individual channels [to be preferred to individual channels and will be encouraged].

(C) Extension of piers into deeper water is preferred to the dredging of access channels or basins whenever practical.

(D) A channel or basin should be designed to insure adequate flushing and should [to] prevent the creation of conditions which are likely to cause stagnant water pockets.

(E) The alignment of a channel or canal should make maximum use of a natural or existing channel. Design and alignment

should minimize disruption of natural sheetflow, water flow, and drainage systems.

(F) A channel proposed to be dredged through highly productive coastal public lands is discouraged and will be approved only in unusual circumstances.

(G) Dredging should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

(6) [~~(4)~~] Dredged material disposal area.

(A) All dredged material should be placed on and contained within suitable upland sites of relatively low productivity above mean high water and where adverse effects of such disposal are minimized.

(B) Dredge material containing hazardous substances ~~that~~ and which presents a threat to public health, safety or the environment, shall be disposed of only in compliance with federal, state and local laws and regulations; further

(i) dredge material shall not be disposed of in any place where such disposal would adversely affect municipal water supplies, shellfish beds, fishery areas (including spawning and breeding areas), wildlife, or recreational areas; and

(ii) disposal of dredge material shall be in accordance with §501.14 [~~§§10.14~~] of this title (relating to Texas Coastal Management Program Policies for Specific Activities and Coastal Natural Resource Areas).

(C) Open water disposal shall comply with subparagraph (B) and shall be considered only if upland alternatives are not available. Any disposal in open waters must be in compliance with all federal, state and local laws and regulations and shall be consistent with the goals and policies of the Texas Coastal Management Program.

(D) Consideration of habitat creation and improvement should be made when environmental damage results.

(7) [~~(5)~~] Jetty, groin, and breakwater.

(A) No new groins will be authorized except under the most compelling circumstances upon request by a city, county, or other public entity for a public purpose.

(B) Plans for construction of a jetty, groin, or breakwater must be analyzed to insure that the structure does not create adverse sediment transportation patterns that induce erosion or undesirable shoaling in adjacent areas.

(C) Existing but unauthorized groins may be authorized to remain in place until such groins are destroyed or damaged in excess of fifty percent under the following conditions:

(i) no significant erosion of adjacent property has occurred or is occurring as a result of the presence of the groin;

(ii) no significant adverse impacts to sensitive habitats have occurred nor are sensitive habitats threatened by the presence of the groin;

(iii) no unnatural accumulation resulting in the deposition of sediments greater than five square feet per linear foot of the affected shoreline; and

(iv) non-compliance with any of the above conditions will be sufficient cause for denial or termination of authorization and for removal of a non-conforming structure.

(v) If a groin causes significant unnatural accumulation but the removal of the groin will cause severe adverse impacts

to sensitive natural resources the boundary between state-owned submerged land and the adjacent littoral property must be established by a Licensed State Land Surveyor.

(D) [~~(C)~~] In addition to minimizing adverse physical effects, the owner of [~~care must be taken that~~] a jetty, groin, or breakwater must ensure that the structure does not unduly interfere with public use of submerged land or the shoreline.

(8) [~~(6)~~] Shoreline stabilization projects.

(A) Vegetative cover is the preferred method of shoreline stabilization and shall be used where its use is practical. Impacts to sensitive habitat will be avoided whenever possible and minimized and mitigated when unavoidable.

(B) Riprap is an acceptable method of shoreline stabilization if composed of interlocking brick, rock large enough not to be displaced by storms, or concrete rubble which is free of protruding rebar. Where possible, sloping riprapping should be used rather than a vertical seawall or bulkhead. Riprap material may extend seaward from the shoreline only as far as required to protect the shoreline.

(C) The use of tires, automobile bodies or parts, appliances, trash and other unconsolidated material is not acceptable and shall not be approved.

(D) Except in special circumstances, a bulkhead or seawall should be located no further seaward than the mean of the high water line, and designed so that reflected wave energy does not destroy stable marine bottom or constitute a safety hazard.

(E) An application for the construction of a bulkhead on a significant coastal public marsh or grassflat, where such will lead to the destruction of this resource, will normally be denied. To avoid this, extreme care should be taken as to the location and type of construction planned for bulkheads in a wetland area.

(9) [~~(7)~~] Marinas.

(A) Marinas should be located in areas where the least dredging and maintenance will be required. Plans for a marina should minimize the disruption of currents and the need for excavation of the shore area. Dead end or deep canals without adequate flushing should be avoided.

(B) Each marina shall provide adequate facilities to its users for the reception of waste and/or garbage. Failure to insure that the users of a marina have access to facilities necessary for the proper and lawful disposal of waste and/or garbage on an ongoing basis may subject the easement to termination and the easement holder to any applicable civil and criminal penalties.

(10) [~~(8)~~] Deposition of fill [~~Landfills~~].

(A) Deposition of fill [~~Landfills~~] proposed in marshes and submerged grass bed areas normally will be denied. Consideration will be given to a fill [~~landfill~~] proposal for a water dependent use or public use on relatively unproductive coastal public lands.

(B) A shoreline fill should be designed and located so that significant damage to existing ecological values or natural resources, or alternation of natural currents will not occur.

(C) The perimeter of fills should be provided with vegetation, retaining walls, riprap, or other mechanisms for erosion prevention.

(D) Fill material should be of such quality that it will not cause water quality degradation. Submerged land should not be considered for a sanitary landfill or the disposal of solid waste.

(h) Mitigation sequence. An applicant is responsible for identifying practicable alternatives or available sites for a proposed project with the fewest adverse impacts. For projects requiring mitigation for unavoidable adverse impacts to natural resources, review shall be based on the following sequence:

(1) Avoidance. Projects must be designed to avoid critical area impacts to the extent practicable. Critical areas include, but are not limited to, a coastal wetland, an oyster reef, a hard substrate reef, submerged vegetation, or tidal sand or mud flat.

(2) Minimization. Unavoidable impacts shall be minimized to the extent practicable through the use of structural or non-structural modifications.

(3) Mitigation and Compensation. Each project approved without a separate mitigation requirement will be subject to a resource impact fee as set forth in §155.15(b)(2)(F).

(i) ~~[(h)]~~ Consideration of application by mineral interest holder. The board will review and consider an application for a channel easement to a mineral interest holder on coastal public lands to insure conformity with the policies, practices, and procedures in these rules and regulations. Environmental recommendations for certain development and production activities will be provided to the mineral interest holder on bay tracts and certain other tracts in the notice of bids booklet published by the General Land Office. Updates of these recommendations will be furnished on request. Development activities conforming with these environmental recommendations normally will receive favorable consideration by the General Land Office.

(j) ~~[(i)]~~ Approval criteria. An easement, if granted by the board, will be approved subject to these rules in addition to such terms and conditions as may be prescribed in the contractual agreement. The board may waive a rule at its discretion. All structures on coastal public lands will be subject to inspection at any time by the board or their authorized representatives. Any easement contract will be for a specific purpose. If a change in the contractual agreement is desired, an amendment application must be filed. An applicant, by accepting an easement to occupy or otherwise place a structure on coastal public lands or water surface areas, agrees and consents to comply with and be bound by the following additional terms and conditions:

(1) to keep the commissioner informed at all times of his or her address, and if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice;

(2) that the allowance of the easement will be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the easement, of other rights by the board of any part of the area included in the easement;

(3) that the structure authorized under contract will be maintained in proper order and will not be allowed to deteriorate to such a degree as to become a hazard or public nuisance;

(4) that all of the surface estate of coastal public lands shall be worked, dredged, filled, or used in such a manner as to prevent pollution, and in the event of pollution, the easement holder shall use all reasonable means to recapture all pollutants which have escaped, whether by reason of a sudden and accidental release or any other means. The easement holder shall be responsible for all damage to public and private property which is the result of pollution arising from any use of the easement including, but not limited to, the easement holder's failure to provide adequate facilities for the reception of waste and/or garbage;

(5) that the disposal or discharge of any waste or garbage into state waters from any marina, pier, dock, wharf, or any other structure located on coastal public lands is strictly prohibited.

(k) ~~[(j)]~~ Renewals. A request for renewal of an easement shall utilize the contract form, rate schedule, and adhere to rules and regulations in effect at the time the renewal is made. Any person requesting a renewal must submit an application form as required in this rule and must include the easement number and date of expiration of the existing easement.

(l) ~~[(k)]~~ Assignment. Assignment may be made of any interest rights granted in whole or in part subject to the written approval of the commissioner. Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. A fee of \$50 payable to the General Land Office must accompany the application for approval of an assignment. No assignment is effective to transfer any rights until approved by the commissioner, the grantee, and the assignee.

(m) ~~[(l)]~~ Termination. Failure to comply with these rules and regulations or the terms and conditions of the easement shall subject ~~[subjects]~~ the easement to termination by the board.

(1) Upon termination of any easement, the grantee will, at the option of the board, within 120 days from said termination, remove all of its personal property and all structures and manmade improvements authorized in the easement contract, provided all monies due have been paid. The grantee shall take whatever measures as are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structures thereon, except as otherwise approved in writing by the commissioner.

(2) The board may consent to premature termination of all or part of any contractual agreement.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102323

Larry R. Soward  
Chief Clerk, General Land Office  
School Land Board

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 305-9129



## CHAPTER 155. LAND RESOURCES

### SUBCHAPTER A. COASTAL PUBLIC LANDS

#### 31 TAC §155.2, §155.5

*(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 School Land Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The School Land Board (Board) proposes to simultaneously repeal and propose new §155.2, relating to Leases, and §155.5, relating to Structure Registrations. The rules are repealed and new rules proposed because the rules have been significantly rewritten and reorganized. The changes are primarily intended to streamline the process by which projects on coastal public lands are authorized. A change common to all the rules is the

deletion of language from the rules that duplicates statutory provisions.

Section 155.2, relating to Leases, includes definitions for certain terms that apply only to this section. In addition, the new language results from the reorganization and simplification of the section by deleting redundant language and combining subsections into a new subsection of general provisions that apply to all leases. This results in a shorter and simpler rule.

Section 155.5, relating to Registration of Structures, is significantly rewritten and reorganized to eliminate superfluous provisions and streamline the process by which specific structures that do not require an easement are registered with the General Land Office.

Mr. Rene Truan, Deputy Commissioner of the Asset Inspection Division, has determined that for the first five-year period these rules are in effect the fiscal implications for the state or local government as a result of enforcing or administering these rules will be a reduction in the effort required by the state to authorize public projects and minimal residential piers. This will in turn reduce the cost of administering the Coastal Lease and Structure Registration programs, and allow staff to concentrate on projects with greater impact. Also other state agencies and local governments will have a reduction in the effort required to obtain leases for public projects.

Mr. Truan has also determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of implementing these rules will be a reduction in the time and effort required to obtain authorization for certain projects on coastal public land. Mr. Truan has determined that there will be no adverse economic impact to small businesses or individuals.

The proposed amendments to §155.2 and §155.5 are subject to the Texas Coastal Management Program (CMP) §505.11(a)(1)(E) and §505.11(a)(1)(G) of this title, relating to Actions and Rules Subject to the CMP and must be consistent with the applicable goals and policies under §501.14(h) of this title, relating to Development in Critical Areas, §501.14(i) of this title, relating to Construction of Waterfront Facilities and Other Structures on Submerged Lands and §501.14(j) of this title, relating to Dredging and Dredged Material Disposal and Placement. The General Land Office reviewed these proposed actions for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The General Land Office has determined that the proposed actions are consistent with the applicable CMP goals and policies.

Comments may be submitted in writing to Melinda Tracy, Legal Services Division, General Land Office, P.O. Box 12873, Austin, Texas 78711 by no later than 30 days from the date of publication.

The General Land Office has prepared a takings impact assessment for the adoption of these proposed rules and has determined that adoption of these rules will not result in the taking of private real property. To receive and copy of the takings impact assessment, please send a written request to Ms. Tracy.

The repealed sections are proposed under Texas Natural Resources Code Chapter 33, §33.064 which authorizes the Board to promulgate procedural and substantive rules necessary for the management of coastal public lands.

Texas Natural Resources Code §§33.105, 33.115, and 33.132 are affected by the repeal of these sections.

§155.2. *Leases.*

§155.5. *Registration of Structures.*

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

Filed with the Office of the Secretary of State, on April 23, 2001.

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Larry R. Soward

Chief Clerk, General Land Office

School Land Board

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For further information, please call: (512) 305-9129



The new sections are proposed under Texas Natural Resources Code Chapter 33, §33.064 which authorizes the Board to adopt procedural and substantive rules necessary for the management of coastal public lands.

Texas Natural Resources Code §§33.105, 33.115, and 33.132 are affected by the proposed new sections.

§155.2. *Leases.*

(a) Definitions. For purposes of this section:

(1) Public recreational purpose means the use of coastal public land suitable for human use and enjoyment.

(2) Estuarine preserve means coastal public land set aside for the protection of fresh-water and marine ecosystems.

(3) Wildlife refuge means land set aside for habitat of native and rare species.

(b) Application. In addition to the requirements set forth in Section 33.102 of the Texas Natural Resources Code, any person desiring a lease for the use of coastal public land shall include the following in the application:

(1) the name, address, and telephone number of the person desiring the lease; and

(2) the intended public purpose.

(c) General Conditions.

(1) Lessee shall be subject to all the terms and conditions of their lease.

(2) Lessee shall be subject to all policies, provisions, terms and conditions applying to leased coastal public land by statute or administrative rule.

(3) Lessee shall be subject to any additional policies, provisions, and conditions adopted by the board for the benefit of the public.

(4) Lessee shall pay to the Land Office the necessary filing fees and all other fees determined by the board as adequate compensation for the use of coastal public land.

(5) Lessee shall not unduly prevent or interfere in any way with the management, administration of, or granting of other rights by the board of any coastal public land included within its lease.

(6) Lessee shall indemnify the lessor against any and all liability for damages to life, person, or property arising from the lessee's occupation and use of the coastal public land covered under its lease.

(7) The Land Office, may at any time, inspect any structure located on leased coastal public land.

(8) Lessee shall keep the Land Office informed at all times of the lessee's current telephone number and mailing address.

(9) No lease may be assigned without prior written approval of the board.

(d) Renewals. Renewals of leases will utilize the contract form and adhere to rules and regulations in effect at the time of the renewal.

(e) Termination. Upon termination of any lease, the lessee shall, at the option of the board remove all of lessee's personal property and all structures constructed or maintained by Lessee and restore the area involved as nearly as practicable to the same condition that existed prior to the placement of any structure thereon within 120 days of the termination date, except as otherwise approved by the commissioner in writing. This obligation of removal and restoration shall survive the expiration of the lease .

(1) The board may consent to the premature termination of all or part of a lease under any of the following conditions:

(A) the intended public purpose is terminated by any other governmental agency action that is not related to lessee's action or failure to act;

(B) the lessee has satisfied all conditions of the lease prior to the to date of termination, unless otherwise waived by the board; or

(C) an emergency due to a change in topography.

(2) Failure to comply with any rules, regulations or the terms of the lease may result in the termination of the lease by the board.

§155.5. Registration of Structures.

(a) Pursuant to Texas Natural Resources Code §33.132, a littoral owner claiming any right in any structure, excluding a fixed or floating pier, which as of August 27, 1973, is situated in whole or in part on coastal public lands, shall have registered with the General Land Office the structure on or before January 1, 1974. Any structure not registered by January 1, 1974, shall require an easement or lease.

(b) Pursuant to Texas Natural Resources Code §33.115, any littoral owner desiring to register a pier shall register such pier with the General Land Office by submitting a \$25 non-refundable registration fee and an executed structure registration. The structure registration shall be on a form provided by the General Land Office and shall contain the following.

(1) the name, mailing address, and telephone number of the littoral owner; the exact dimensions of the pier, including a drawing showing such dimensions;

(2) the exact location of the pier, including a vicinity map showing the location of the pier on coastal public land;

(3) a statement verifying that the littoral owner is the owner of the property adjoining the coastal public land on which the pier was constructed;

(4) a statement verifying that the littoral owner has read and understands the terms and conditions set forth in this section;

(5) a statement acknowledging that, if at any time it is discovered that the pier does not meet the requirements set forth in Texas Natural Resources Code §33.115, the littoral owner may be subject to penalties as prescribed by law; and

(6) a statement verifying that the littoral owner will comply will all applicable local, state, and federal laws, ordinances, rules, orders, and regulations of governing agencies concerning use of the pier and adjacent coastal public land.

(c) Upon receipt of the completed and executed structure registration form and the registration fee by the General Land Office, the pier shall be deemed registered.

(d) Any person registering a structure or pier pursuant to this section agrees and consents to comply with and be bound by the following terms and conditions:

(1) to keep the General Land Office informed at all times of his or her address;

(2) to maintain the structure or pier in proper condition and not allow it to deteriorate to such a degree as to become a hazard or public nuisance;

(3) to notify the General Land Office upon a change of ownership, or property interest, in the adjacent littoral property within 30 days of such change; and

(4) to permit agents, representatives and employees of the General Land Office, at all times, to enter into and on a registered structure or pier and adjacent property of the littoral owner for the purpose of inspection of the structure or pier and for any other reasonable purpose necessary to protect coastal public land.

(e) In the event a structure has been registered pursuant subsection (a) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild the structure, the littoral owner is required to obtain an easement or lease in lieu of the prior registration.

(f) In the event a pier has been registered pursuant to subsection (b) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild such pier, the littoral owner is required to obtain in lieu of the original registration:

(1) a new registration if the pier's dimensions or location are changed from the footprint outlined in the structure registration, or

(2) an easement if such pier will be for commercial purposes, will require dredging or filling, will exceed 100 feet in length or 25 feet in width, or has been modified or rebuilt.

(g) To the greatest extent possible, the littoral owner shall construct a pier, pursuant to Texas Natural Resources Code §33.115, in a manner that avoids existing marshes, oyster reefs, sea grass or shallow water capable of supporting these habitats. Impact to sensitive habitats that cannot be avoided shall be minimized to the greatest extent possible.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

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Larry R. Soward

Chief Clerk, General Land Office

School Land Board

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For further information, please call: (512) 305-9129



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

### CHAPTER 321. GENERAL PROVISIONS

#### 40 TAC §321.1

The Commissioners of the Texas Commission on Human Rights proposes an amendment to §321.1, concerning Definitions. Amended §321.1 deletes the reference to Texas Revised Civil Statutes Annotated Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rule is in effect, there will be no fiscal impact on state and local government as a result the amended rule.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses as a result of the amended rule.

Comments on the proposed amendments must be submitted within 30 days after the publication of the proposed amendments in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

The amendments are proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §321.1. Definitions.

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

(1) (No change.)

(2) Age--"Because of" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older. Nothing in the Texas Labor Code prohibits the compulsory retirement of any employee who has attained 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$27,000.

For purposes of the Texas Labor Code, §21.054(b) [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §5.04(b))], "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

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

(5) Chairman--That member of the commission designated by the governor, pursuant to the Texas Government Code, §461.056 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §3.01(a))].

(6) (No change.)

(7) Commissioner--Any one of the duly appointed members of the commission, including the chairman, pursuant to the Texas Government Code, §461.051 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §3.01(a))].

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

(11) Deferral or referral--The same meaning pursuant to the Texas Labor Code, §21.155 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04)].

(12) - (20) (No change.)

(21) Government Code--The Texas Government Code, Title 4, Subtitle E, Chapter 461, §§461.001-461.101, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective September 1, 1993, relating to the partial codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §1.01 et seq (1993))].

(22) Labor Code--The Texas Labor Code, Title 2, Subtitle A, Chapter 21, §§21.001-21.306, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective September 1, 1993, relating to the partial codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act and as substantively amended by Senate Bill 959, Acts 1995, 74th Legislature, Chapter 76, effective September 1, 1995 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §1.01 et seq (1993))].

(23) (No change.)

(24) Local commission--Created by a political subdivision or two or more political subdivisions acting jointly pursuant to the Texas Labor Code, §21.152 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.02)], and recognized as a deferral agency by the United States Equal Employment Opportunity Commission pursuant to the United States Civil Rights Act, Title VII, §706(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act.

(25) - (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 April 23, 2001.

TRD-200102307

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 437-3458





## CHAPTER 323. COMMISSION

### 40 TAC §323.1, §323.2

The Commissioners of the Texas Commission on Human Rights proposes amendments to §323.1, concerning General Description, and §323.2, concerning Term of Office. Amended §323.1 and §323.2 delete the reference to Texas Revised Civil Statutes Annotated Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rule is in effect, there will be no fiscal impact on state and local government as a result the amended rule.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses as a result of the amended rule.

Comments on the proposed amendments must be submitted within 30 days after the publication of the proposed amendments in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

The amendments are proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §323.1. *General Description.*

The appointment of the commissioners, the composition of the commission, and the designation of the chairman shall be in accordance with the Texas Government Code, §461.051 and §461.056 [(formerly Texas Revised Civil Statutes Annotated, Article 5221k, §3.01(a))].

#### §323.2. *Term of Office.*

The term of office of commissioners, filling of vacancies on the commission, reappointment, and removal shall be in accordance with the Texas Government Code, Title 4, Subtitle E, Chapter 461, §§461.051-461.054 [(formerly Texas Revised Civil Statutes Annotated, Article 5221k, §3.01(b) and §3.011)].

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102308

Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Earliest possible date of adoption: June 3, 2001  
For further information, please call: (512) 437-3458

## CHAPTER 325. LOCAL COMMISSIONS

### 40 TAC §§325.1 - 325.3, 325.5

The Commissioners of the Texas Commission on Human Rights propose amended §§325.1 concerning Deferral Authority, 325.2, concerning Deferral Procedures, 325.3, concerning Meetings, and 325.5, concerning General Powers. Amended §§325.1, 325.2, 325.3, and 325.5 delete the reference to Texas Revised Civil Statutes Annotated Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rule is in effect, there will be no fiscal impact on state and local government as a result the amended rule.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses or individuals as a result of the amended rule.

Comments on the proposed amendment must be submitted within 30 days after the publication of the amended section in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

This amendment is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §325.1. *Deferral Authority.*

The commission shall defer a complaint filed with it to a local commission within five working days pursuant to the Texas Labor Code, §21.155(a) [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04(a))].

#### §325.2. *Deferral Procedures.*

(a) For a complaint filed with the commission over which the federal government has deferred jurisdiction, timeliness of the complaint shall be measured by the date on which the complaint is received by the commission for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(a))].

(b) For a complaint deferred to the commission by the federal government, timeliness of the complaint shall be measured by the date on which the complaint is received by the federal government for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(a)~~].

(c) For a complaint deferred to the commission by a local commission, timeliness of the complaint shall be measured by the date on which the complaint is received by the local commission for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(a)~~].

(d) (No change.)

(e) The Act grants a local commission the exclusive right to take appropriate action within the scope of its powers and jurisdiction to process a complaint deferred by the commission pursuant to the requirements of the Texas Labor Code, §21.155 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04~~], and this chapter.

(f) A local commission may waive its right to the period of exclusive processing of a complaint provided by the Act with respect to any complaint or category of complaints by deferring a matter under its jurisdiction to the commission pursuant to the Texas Labor Code, §21.156 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04(e)~~].

(g) - (k) (No change.)

(l) For purposes of satisfying the requirements of the Texas Labor Code, §21.155 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04~~], the commission shall not assume jurisdiction over a complaint deferred to a local commission, except as follows:

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

(3) where the local commission has not acted on the complaint pursuant to the requirements of the Texas Labor Code, §21.155(c) [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04(b)~~], and this chapter.

### §325.3. *Final Determination of a Local Commission.*

(a) (No change.)

(b) For purposes of satisfying the Texas Labor Code, §§21.208 and 21.251-21.256 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(a)~~], a local commission shall submit to the commission by registered or certified mail, return receipt requested, notification if a deferred complaint is dismissed, or shall submit, within 120 days of the date the complaint is deferred by the commission, written notification if the local commission has not filed a civil action or not successfully negotiated a conciliation agreement between the complainant and respondent. A local commission shall notify the commission within five working days if the local commission does not intend to act on a complaint deferred by the commission or if it receives a complaint over which the commission has deferral jurisdiction.

### §325.5. *Eligibility.*

(a) Notwithstanding any other rules of the commission, the commission shall defer complaints pursuant to the Texas Labor Code, §21.155 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.04~~], to local commissions which are in compliance with the following requirements:

(1) a political subdivision adopts and enforces an ordinance pursuant to the Texas Labor Code, §21.151 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.01~~];

(2) a political subdivision or two or more political subdivisions acting jointly creates a local commission pursuant to the Texas Labor Code, §21.152 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.02~~];

(3) the local commission can exercise the powers pursuant to the Texas Labor Code, §§21.153-21.154 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §4.03~~]; and

(4) (No change.)

(b) To be certified by the commission as a local commission pursuant to this chapter and the Texas Labor Code, Subchapter D, §§21.151-21.156 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §§4.01-4.04~~], the following materials and information shall be submitted to the commission:

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

(c) (No change.)

(d) If the commission does not certify the local commission as subject to this chapter and the Texas Labor Code, Subchapter D, §§21.151-21.156 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §§4.01-4.04~~], it shall identify in writing the reasons for noncertification and endeavor to provide the local commission the necessary assistance to comply with the requirements established by this chapter and the Texas Labor Code, Subchapter D, §§21.151-21.156 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §§4.01-4.04~~].

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102309

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 437-3458



## CHAPTER 327. ADMINISTRATIVE REVIEW SUBCHAPTER A. ADMINISTRATIVE INVESTIGATION AND REVIEW

### 40 TAC §§327.3, 327.4, 327.6 - 327.10, 327.12

The Commissioners of the Texas Commission on Human Rights propose amended §§327.3 concerning Subpoena, 327.4 concerning Dismissal of Complaint, 327.6 concerning Conciliation, 327.7 concerning Notice to Complainant, 327.8 concerning Failure to Issue Notice, 327.9 concerning Access to Commission Records, 327.10 concerning Confidentiality, and 327.12 concerning Temporary Injunctive Relief. Amended §§327.3, 327.4, 327.6, 327.7, 327.8, 327.9, 327.10, and 327.12 delete the reference to Texas Revised Civil Statutes Annotated Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director, has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact on state and local government as a result the amended rules.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses or individuals as a result of the amended rule.

Comments on the proposed amendments must be submitted within 30 days after the publication of the amended section in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

The amendments are proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §327.3. Subpoena.

(a) To effect the purposes of this Act pursuant to the Texas Labor Code, §21.003(4) [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §3.02(a)(7))], any commissioner, the executive director, or his or her designee, shall have the authority to sign and issue a subpoena to compel attendance of necessary witnesses for examination or testimony under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of the Texas Labor Code, for inspection and copying. The issuance of subpoenas shall be governed by the Administrative Procedure Act, Texas Government Code, Chapter 268, Subchapter D, §2001.089 and §2001.103. The commission authorizes the executive director, or his or her designee, or a commissioner to exercise this power on behalf of the commission.

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

(d) On a failure to comply with a subpoena, the commission shall apply to the district court of the county in which the person is found, resides, or transacts business, for an order directing compliance pursuant to the Texas Labor Code, §21.306(b) [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §8.02(b))].

#### §327.4. Dismissal of Complaint.

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

(g) Where the commission dismisses a complaint filed with it, the commission shall so notify in writing the complainant and the respondent by registered or certified mail, return receipt requested. Such notification shall inform the complainant of his or her right to file a civil action against the respondent named in the complaint pursuant to the Texas Labor Code, §21.208 and §21.252 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(a))]. The commission shall delegate authority to issue such notifications to the executive director or his or her designee.

#### §327.6. Conciliation.

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

(g) Where the commission has not successfully negotiated a conciliation agreement between the respondent and complainant, the commission shall so notify in writing the complainant and respondent by registered or certified mail, return receipt requested. Such notification shall inform the complainant of his or her right to file a civil action against the respondent named in the complaint pursuant to the Texas Labor Code, §§21.208-21.252 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(a))]. The executive director is authorized to issue this notification on behalf of the commission.

(h) (No change.)

#### §327.7. Notice to Complainant.

(a) If the complaint filed with the commission pursuant to the Texas Labor Code, §21.201 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(a))], is dismissed by the commission or is not resolved before the expiration of the 180th day after the date of filing of the complaint, the commission shall so inform the complainant in writing by registered or certified mail, return receipt requested. Any complainant who is so informed may request the commission's notice of right to file a civil action. The complainant shall request the notice in writing and identify the respondent, the commission's complaint number, and the United States Equal Employment Opportunity Commission's complaint number, if the complaint has been deferred by the federal government.

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

#### §327.8. Failure to Issue Notice.

The commission's failure to issue a notice of right to file civil action after 180 days from the date the complaint is received by the commission does not affect the complainant's right under the Texas Labor Code, §21.252(d) [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(j))], to bring a civil action against the respondent.

#### §327.9. Access to Commission Records.

Pursuant to the limitations established by the Texas Labor Code, §§21.304-21.305 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §8.02(a))], the executive director shall, on written request of a party to a complaint filed under the Texas Labor Code, §21.201 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(a))], allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

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

#### §327.10. Confidentiality.

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the Texas Labor Code, §§21.201-21.207 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01)], except as necessary to the conduct of a proceeding under this Act.

(b) (No change.)

#### §327.12. Temporary Injunctive Relief.

Based on a preliminary investigation of a complaint, the commission may seek temporary injunctive relief pursuant to the Texas Labor Code, §21.210 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §6.01(g))].

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

Filed with the Office of the Secretary of State, on April 23, 2001.  
TRD-200102310  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Earliest possible date of adoption: June 3, 2001  
For further information, please call: (512) 437-3458



## CHAPTER 329. JUDICIAL ACTION

### 40 TAC §329.1

The Commissioners of the Texas Commission on Human Rights propose amended §329.1 concerning Enforcement. Amended §329.1 deletes the reference to Texas Revised Civil Statutes Annotated. Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact on state and local government as a result the amended rules.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses or individuals as a result of the amended rule.

Comments on the proposed amendment must be submitted within 30 days after the publication of the amended section in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

This amendment is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §329.1. *Enforcement.*

(a) The commission may bring a civil action against the respondent named in a complaint to effect the purposes of the Act pursuant to the requirements of the Texas Labor Code, §21.251 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(a))].

(b) (No change.)

(c) The commission, on a majority vote of the commissioners, may intervene in any civil action pursuant to the requirements of the Texas Labor Code, §21.255 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §7.01(a))].

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

Filed with the Office of the Secretary of State, on April 23, 2001.  
TRD-200102311  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Earliest possible date of adoption: June 3, 2001  
For further information, please call: (512) 437-3458



## CHAPTER 331. REPORTS AND RECORD KEEPING

### 40 TAC §331.1

The Commissioners of the Texas Commission on Human Rights propose amended §331.1 concerning Preservation and Use. Amended §331.1 deletes the reference to Texas Revised Civil Statutes Annotated. Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact on state and local government as a result the amended rules.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses as a result of the amended rule.

Comments on the proposed amendment must be submitted within 30 days after the publication of the amended section in the *Texas Register* to Katherine A. Antwi, Interim Executive Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

This amendment is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §331.1. *Preservation and Use.*

The commission shall require a person under investigation in connection with a complaint filed under this Act or subject to the Act to make and keep records pursuant to the requirements of the Texas Labor Code, §§21.301-21.303 [(formerly Texas Revised Civil Statutes Annotated Article 5221k, §8.01)].

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102312

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 437-3458



## CHAPTER 333. CONFORMITY

### 40 TAC §333.1

The Commissioners of the Texas Commission on Human Rights propose amended §333.1 concerning Conformity. Amended §333.1 deletes the reference to Texas Revised Civil Statutes Annotated Article 5221k, which appear in parentheses after each citation to Chapter 21 of the Texas Labor Code. Texas Revised Civil Statutes Annotated Article 5221k was codified into Chapter 21 of the Texas Labor Code in 1995 by the 74th Texas Legislature. It is no longer necessary to provide the reference to the historic citation.

Katherine A. Antwi, Interim Executive Director has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact on state and local government as a result the amended rules.

Ms. Antwi has also determined that the public benefit will be clarity and consistency within the rules. There will be neither an economic cost nor adverse impact on small businesses or individuals as a result of the amended rule.

Comments on the proposed amendment must be submitted within 30 days after the publication of the amended section in the *Texas Register* to Katherine A. Antwi, Interim Executive

Director, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13006, Austin, Texas, 78711 or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any requests for a public hearing must be submitted separately to the Interim Executive Director.

This amendment is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code, Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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

#### §333.1. Conformity.

Pursuant to the Texas Labor Code, §21.006 [~~formerly Texas Revised Civil Statutes Annotated Article 5221k, §10.05~~], the commission is authorized to administer the provisions of this Act in a manner necessary to qualify for 706 deferral agency designation and the receipt of funds from the federal government.

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102313

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Earliest possible date of adoption: June 3, 2001

For further information, please call: (512) 437-3458



# WITHDRAWN RULES

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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 filing 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*.

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**TITLE 1. ADMINISTRATION**

**PART 12. COMMISSION ON STATE  
EMERGENCY COMMUNICATIONS**

**CHAPTER 251. REGIONAL PLANS--  
STANDARDS**

**1 TAC §251.9**

The Commission on State Emergency Communications has withdrawn from consideration the proposed amendment to §251.9 which appeared in the November 10, 2000, issue of the *Texas Register* (25 TexReg 11197).

Filed with the Office of the Secretary of State on April 23, 2001.

TRD-200102331

Carey F. Spence

Executive Director

Commission on State Emergency Communications

Effective date: April 23, 2001

For further information, please call: (512) 305-6933



# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 1. ADMINISTRATION

### PART 13. TEXAS INCENTIVE AND PRODUCTIVITY COMMISSION

#### CHAPTER 271. PROCEDURAL RULES

##### 1 TAC §271.21

The Texas Incentive and Productivity Commission adopts proposed rule 1 TAC §271.21 without changes to the proposed rule as it was published in the January 19, 2001, issue of *Texas Register* (26 TexReg 735).

The rules the Board adopts by reference provide for a policy and a purpose for the rules, definitions applicable to the HUB rules, annual procurement HUB utilization goals, subcontracting requirements, agency planning responsibilities, state agency reporting requirements, a HUB certification process, protests from denial of HUB applications, a HUB recertification process, revocation provisions, certification and compliance reviews, compilation of a HUB directory, HUB graduation procedures, review and revision of GSC's HUB program, a memorandum of understanding between GSC and the Texas Department of Economic Development concerning technical assistance and budgeting for the HUB program, HUB Coordinator responsibilities, HUB forum programs for state agencies, and a mentor-protégé program.

No comments were received in response to the proposed rule amendments.

The new rule conforms to and is adopted pursuant to the authority of Texas Government Code, §2161.003, which directs all state agencies to adopt the rules of the General Services Commission (GSC) regarding historically underutilized businesses (HUBs) as the agency's own rules. Those rules apply to the Board's purchase of goods and services paid for with appropriated money. The rule also is adopted under the Commission's general rule making authority under Texas Government Code, §2108.004 which authorizes the Commission to adopt rules to carry out Chapter 2108 of the Texas Government Code, the statute governing the activities of the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2001.

TRD-200102252

Ed Bloom  
Executive Director  
Texas Incentive and Productivity Commission  
Effective date: May 9, 2001  
Proposal publication date: January 19, 2001  
For further information, please call: (512) 475-2393



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 129. STUDENT ATTENDANCE

##### SUBCHAPTER AA. COMMISSIONER'S RULES

##### 19 TAC §129.1023, §129.1025

The Texas Education Agency (TEA) adopts new §129.1023 and §129.1025, concerning student attendance accounting without changes to the proposed text as published in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1228) and will not be republished. The new sections adopt by reference the *2000-2001 Student Attendance Accounting Handbook* which provides student attendance accounting rules for school districts and charter schools. Texas Education Code (TEC), §42.004, requires the commissioner, in accordance with rules of the State Board of Education (SBOE), to take such action and require such reports as may be necessary to implement and administer the Foundation School Program (FSP). SBOE rule, 19 Texas Administrative Code §129.21, delineates responsibilities of the commissioner to provide: guidelines for attendance accounting, necessary records and procedures required of school districts in preparation of a daily attendance register, and provisions for special circumstances regarding attendance accounting.

The *2000-2001 Student Attendance Accounting Handbook* provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA will distribute FSP resources under the procedures specified in the *2000-2001 Student Attendance Accounting Handbook*. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory

authority for the commissioner of education to adopt by reference the *2000-2001 Student Attendance Accounting Handbook*, legal counsel with the TEA recommended that the procedures contained in the handbook be adopted as part of the *Texas Administrative Code*.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Education Code, §42.004, 74th Texas Legislature, 1995, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2001.

TRD-200102258

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research  
Texas Education Agency

Effective date: May 10, 2001

Proposal publication date: February 9, 2001

For further information, please call: (512) 463-9701



## TITLE 22. EXAMINING BOARDS

### PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

#### CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER A. THE BOARD

##### 22 TAC §51.3

The Texas State Board of Barber Examiners adopts amendments to §51.3, concerning Administrative Fines without changes to the text published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1820).

The amendments occur in §51.3 Administrative Fines, (b) Fine Schedule under Penalties for Practice and Procedures Violations, Category VA not to exceed the following amounts 1st \$100, 2nd \$300, 3rd \$500 Expired License changes the reference from TEX. OCC CODE ANN. §1601.402 to TEX. OCC CODE ANN. §1601.251 the change will reference to the correct statute; Practice and Procedures Category II not to exceed the following amounts 1st \$500, 2nd \$750, 3rd \$1000 will be adding a new rule violation Right of Access reference §51.6; under Practice and Procedures Category VC not to exceed the following amounts 1st \$50, 2nd \$100, 3rd \$150 will be adding a new rule violation Current Address reference §51.4.

There were no comments received on the proposed amendment to §51.3.

The amendment is proposed under former Texas Barber Law, Texas Civil Statutes, Article 8407a, Section 24A-M, (repealed) now recodified Texas Occupations Code Chapter 1601.155 (1999), which provides the board with the authority to impose

administrative penalties to protect the public's health and safety. No other Article or Statute is effected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2001.

TRD-200102202

Will K. Brown

Executive Director

Texas State Board of Barber Examiners

Effective date: May 7, 2001

Proposal publication date: March 2, 2001

For further information, please call: (512) 305-8475



##### 22 TAC §§51.4 - 51.6

The Texas State Board of Barber Examiners adopts new §51.4, concerning Current Mailing Address and Change of Mailing Address; §51.5, concerning Good Standing Required for License Renewal; §51.6 concerning Right of Access, without changes to the text published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1820).

The new §51.4 Current mailing Address and change of Mailing Address requires a current mailing address be on file and all Licensees must notify the board within 10 days of any mailing address change. The new §51.5 Good Standing Required for License Renewal states no licensee shall be able to renew a license if they are in default. The new §51.6 Right of Access authorizes a representative of the board to enter a business to conduct an inspection.

There were no comments received on the proposed new §§51.4 - 51.6.

The new rules are adopted under former Texas Barber Law, Texas Civil Statutes, Article 8401-8407a, Section §28(a), (repealed) now recodified by House Bill 3155 as Chapter 1601.155 OCCUPATIONS CODE (1999), which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

The following sections of the Texas Barber Law, Texas Civil Statutes, Article 8401-8407a, (repealed) now recodified by House Bill 3155 as Chapter 1601 of the TEXAS OCCUPATIONS CODE (1999) are effected by the proposed new §51.4 Current Mailing Address and Change of Mailing Address; §51.5 Good Standing Required for License Renewal; §51.6 Right of Access and are as follows: TEX. OCC. CODE 1601.001 and 1601.155.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2001.

TRD-200102201

Will K. Brown  
Executive Director  
Texas State Board of Barber Examiners  
Effective date: May 7, 2001  
Proposal publication date: March 2, 2001  
For further information, please call: (512) 305-8475



## SUBCHAPTER I. DEFINITIONS

### 22 TAC §51.141

The Texas State Board of Barber Examiners adopts new §51.141, concerning Definitions, without changes to the proposed text as published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1820).

The new §51.141, Definitions, clarifies words and terms, when used in the chapter, for the Line of Demarcation between "the hair" and "the beard", the hair Relating to Haircutting, the Sideburn, the Beard and Out of Scope. The board's adoption of the rules is in accordance with the board's Rule Review Plan adopted pursuant to Article IX, §167 of the Appropriation Act.

There were no comments received on the proposed new §51.141.

The new rule is adopted pursuant to Texas Barber Law, Texas Civil Statutes, Article 8407a, §28(a), (repealed) now recodified by House Bill 3155 as Chapter 1601.155 OCCUPATIONS CODE (1999), which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2001.

TRD-200102200  
Will K. Brown  
Executive Director  
Texas State Board of Barber Examiners  
Effective date: May 7, 2001  
Proposal publication date: March 2, 2001  
For further information, please call: (512) 305-8475



## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

#### SUBCHAPTER E. CONTESTED CASES

##### 22 TAC §661.60, §661.97

The Texas Board of Professional Land Surveying adopts new §661.60, concerning Responsibility to the Board and §661.97,

concerning Action in Another Jurisdiction. Section 661.60 is adopted with minor changes to the proposed text as published in the January 19, 2001, issue of the *Texas Register* (26 TexReg 756). Section 661.97 is adopted without changes to the proposed text as published in the January 19, 2001, issue of the *Texas Register* (26 TexReg 756) and will not be republished.

Section 661.60 clarifies the repercussion of not complying with deadline dates established by the Board. Section 661.97 clarifies actions the Board can take against registrants if disciplinary actions are taken in another jurisdiction.

Section 661.60 required some minor formatting changes. The word "/her" has been added after "his" in subsection (a)(2).

No comments were received regarding adoption of the rules.

The new sections are adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

##### §661.60. Responsibility to the Board.

(a) A registrant/licensee/SIT whose registration/license/certification is current or has expired but is renewable under the Texas Professional Land Surveying Practices Act and Board rules, is subject to all provisions of the Act and Board rules. A registrant/licensee/SIT shall respond fully and truthfully to all Board inquiries and furnish all maps, plats, surveys or other information or documentation requested by the Board within 30 days of such registrant's licensee's or SIT's receipt of a Board inquiry or request concerning matters under the jurisdiction of the Board. An inquiry or request shall be deemed received on the earlier of:

(1) the date actually received as reflected by a delivery receipt from the United States Postal Service or a private courier or

(2) two days after the Board request or inquiry is deposited in a postage paid envelope in the United States mail addressed to the registrant, licensee or SIT at his/her last address reflected on the records of the Board.

(b) Any registrant, licensee or SIT subject to Board decisions or orders shall fully comply with the final decisions and orders within any time periods which might be specified in such decisions or orders. Failure to timely, fully and truthfully respond to Board inquiries, failure to furnish requested information, or failure to timely and fully comply with Board decisions and orders, shall constitute separate offenses of misconduct subject to such penalties as may be imposed by the Board as provided under the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2001.

TRD-200102230  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Effective date: May 8, 2001  
Proposal publication date: January 19, 2001  
For further information, please call: (512) 452-9427



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING**

**CHAPTER 183. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION**

**SUBCHAPTER E. FEES**

**40 TAC §183.573**

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.573, concerning Fees, without changes to the text published in the November 17, 2000, *Texas Register* (25 TexReg 11379). This rule will update the format in which the fees are published.

No comments were received on the proposed changes.

This amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2001.

TRD-200102182

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: May 7, 2001

Proposal publication date: November 17, 2000

For further information, please call: (512) 407-3250



# —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.

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## Proposed Rule Reviews

Texas Commission on Human Rights

### Title 40, Part 11

The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 335, consisting of §§335.1 - 335.7, concerning General Provisions. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102238

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapters 336 and 337, consisting of §336.1, concerning Commission and §§337.1 - 337.3, concerning Referral to Municipalities. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102239

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 338, consisting of §§338.1 - 338.8, concerning Exempted Real Estate-Related Exemptions. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102240

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 339, consisting of §§339.1 - 339.18, concerning Discriminatory Housing Practices. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102241  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 340, consisting of §§340.1 - 340.28, concerning Administrative Enforcement. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102242  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 341, consisting of §§341.1 - 341.16, concerning Administrative Hearings Proceedings. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102243  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapters 342 and 343 consisting of §§342.1 - 342.3, concerning Prompt Judicial Action, and §§343.1 - 343.5, concerning Enforcement by a Private Person. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200102244  
Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapters 344, 345, 346, 347 and 348, consisting of §§344.1 - 344.3, concerning Other Action by the Commission, §345.1, concerning Prevailing Party, §346.1, concerning Fair Housing Fund, §347.1, concerning Statutory Authority, and §348.1, concerning Effective Date. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.



Texas Natural Resource Conservation Commission

**Title 30, Part 1**

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the readoption of Chapter 112, Control of Air Pollution from Sulfur Compounds. This review of Chapter 112 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

**CHAPTER SUMMARY**

Chapter 112 regulates, through state and federal air quality standards, the control of air pollution from sulfur compounds, which include sulfur dioxide (SO<sub>2</sub>), sulfuric acid mist (H<sub>2</sub>SO<sub>4</sub>), hydrogen sulfide (H<sub>2</sub>S), and total reduced sulfur (TRS). Chapter 112 was initially adopted in 1968 by the Texas Air Control Board (TACB) in accordance with the Texas Clean Air Act (TCAA) of the 60th Legislature, 1967. The standards adopted at that time were state air quality standards, because the Federal Clean Air Act of 1970, as codified in 42 United States Code (USC), had not been promulgated and there were no federal air quality standards. In 1972, the TACB submitted the SO<sub>2</sub> rules as part of the state implementation plan (SIP) for the SO<sub>2</sub> national ambient air quality standard (NAAQS) in accordance with 42 USC, §7409, National Primary and Secondary Ambient Air Quality Standards; and §7410, State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards. In 1973, the TACB adopted rules concerning SO<sub>2</sub> emission limits from all processes, including sulfuric acid plants, in non-ferrous smelters. In 1989, the TACB adopted rules and a state plan concerning control of sulfuric acid mist and TRS from existing facilities in accordance with 42 USC, §7411(d), Standards of Performance for Existing Sources.

This chapter is organized in four parts called undesignated (does not have an outline designation) heads. The first undesignated head, Control of Sulfur Dioxide, contains the definitions; compliance, reporting, and recordkeeping requirements; air quality standards in the form of net ground level concentration limits; conditions for exemption from the net ground level concentration limits; allowable emission rate standards for various types of facilities that emit SO<sub>2</sub>; plan requirements for temporary low-sulfur fuel shortages; area control plan requirements specifying conditions for exemption from net ground level concentration limits for all SO<sub>2</sub> emitting facilities inside a specified area of the state; and an allowable emission rate standard for facilities operating under an area control plan. The specific types of SO<sub>2</sub> emitting facilities covered by allowable emission rate standards include sulfuric acid plants burning elemental sulfur, sulfuric acid plants, sulfur recovery plants, solid fossil fuel-fired steam generators, plants combusting liquid fuel, and nonferrous smelters. The second undesignated head, Control of Hydrogen Sulfide, establishes an allowable net ground level concentration limit of 0.08 part per million (ppm) averaged over a 30-minute period for H<sub>2</sub>S emission sources located near for property used for residential, business, or commercial purposes; a net ground level concentration limit of 0.12 ppm averaged over a 30-minute period for sources

located near property used for purposes other than residential, business, or commercial; and specifies the procedures by which the H<sub>2</sub>S net ground level concentration may be determined. The third undesignated head, Control of Sulfuric Acid, establishes net ground level concentration limits for H<sub>2</sub>SO<sub>4</sub> acid emission sources; allowable emission rate standards for specific types of H<sub>2</sub>SO<sub>4</sub> mist emission sources (H<sub>2</sub>SO<sub>4</sub> or oleum facilities burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides, mercaptans, or acid sludge); an exemption for H<sub>2</sub>SO<sub>4</sub> plants or facilities used exclusively as SO<sub>2</sub> control systems, chamber process plants, acid concentrators, or oleum storage and transfer facilities; specifies the procedures by which the H<sub>2</sub>SO<sub>4</sub> net ground level concentrations and maximum allowable emission rates may be determined; inspection and recordkeeping requirements; and compliance schedules. Finally, the fourth undesignated head, Control of Total Reduced Sulfur, establishes emission limits and alternate emission limits for TRS compounds from kraft pulp mills; inspection requirements; monitoring and recordkeeping requirements; and compliance schedules. The chapter has been revised a total of nine times since its initial adoption in January 1968.

**PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST**

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 112 continue to exist. These rules are needed to control emissions of SO<sub>2</sub>, H<sub>2</sub>S, H<sub>2</sub>SO<sub>4</sub>, and TRS throughout the state. Specifically, the rules controlling SO<sub>2</sub> were developed under the authority of TCAA, §382.011, General Powers and Duties, which authorizes the commission to control air contaminants; §382.013, Air Quality Control Regions, which authorizes the commission to designate air quality control regions; and §382.017, Rules, which authorizes the commission to adopt rules to implement TCAA. The rules controlling SO<sub>2</sub> are also needed to implement TCAA, §382.012, State Air Control Plan, which mandates the commission to develop a comprehensive plan for the proper control of the state's air; and 42 USC, §7409 and §7410 to control SO<sub>2</sub> from sources in specific counties to maintain attainment of the primary and secondary SO<sub>2</sub> NAAQS. The rules controlling H<sub>2</sub>S were developed under the authority of TCAA, §§382.011, 382.013, and 382.017; needed to implement TCAA, §382.012. The rules controlling H<sub>2</sub>SO<sub>4</sub> and TRS were developed under the authority of TCAA, §§382.011, 382.013, and §382.017. The rules controlling H<sub>2</sub>SO<sub>4</sub> and TRS are also needed to implement TCAA, §382.012 and 42 USC, §7411(d) to control specifically designated pollutants from existing designated sources.

The commission's preliminary review of Chapter 112 revealed a number of inconsistencies, incorrect references, and outdated citations. In addition, Chapter 112 requires a method of calculating emission rates (Sutton's equation) that is potentially outdated, and possibly should be augmented or replaced by the dispersion modeling techniques. The commission specifically seeks public comment regarding which is the more acceptable and appropriate method, the use of Sutton's equation with data from stack samples and measurements, or dispersion modeling techniques.

**PUBLIC COMMENT**

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules in Chapter 112 continue to exist. Any identified updates, consistency issues, or other needed changes will be addressed in subsequent rule-making actions, after comments are received and evaluated. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas



78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-011-112-AI. Comments must be received by 5:00 p.m., June 4, 2001. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412; or Alan J. Henderson, Policy and Regulations Division, at (512) 239-1510.

TRD-200102303  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 23, 2001



The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review and proposes the re adoption of Chapter 317, Design Criteria for Sewerage Systems. This review of Chapter 317 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for re adoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 317 provides standards for the commission to use in its review and approval of plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes. These standards are intended to promote the design of facilities in accordance with effluent quality requirements necessary to meet state water quality standards, good public health, and water quality engineering practices. At a minimum, Chapter 317 includes requirements for a preliminary engineering report which provides the general engineering concepts underlying the proposed project as well as the final engineering report detailing the fully developed project along with related plans and specifications.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 317 continue to exist. Chapter 317 is authorized under Texas Water Code (TWC), §5.103, which allows the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission the authority to adopt rules consistent with provisions in the TWC relating to waste discharges; and TWC, §26.023, which requires the commission to set water quality standards for all water in the state. Chapter 317 is also specifically authorized under TWC, §26.034, which requires the commission to adopt standards to determine which plans and specifications the commission will review for approval.

In a future rulemaking (Rule Log No. 1995-100-317-WT), the commission will propose to repeal Chapter 317 and move it to new Chapter 217 which will meet the commission's goal of having all water-related rules under the 200 series. New Chapter 217 will also bring the standards for wastewater treatment systems up-to-date with current engineering practices and technology; and update the rules to better reflect the commission's permitting practices.

#### PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules

in Chapter 317 continue to exist. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-018-317-WT. Comments must be received in writing by 5:00 p.m., June 4, 2001. For further information or questions concerning this proposal, please contact Auburn Mitchell, Policy and Regulations Division, (512) 239-1873.

TRD-200102298  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 23, 2001



The Texas Natural Resource Conservation Commission (TNRCC or commission) files this notice of intention to review and proposes the concurrent repeal of Chapter 322, Community Wastewater Planning, which is published in the Proposed Rules section of this issue of the *Texas Register*. This review of Chapter 322 is proposed in accordance with Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for re adoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

#### CHAPTER SUMMARY

Chapter 322 provides that in order to assist a municipality in implementing a regional wastewater plan, the commission will consider regional plans that have been previously approved by the commission and adopted by a municipality. The municipality must request, in writing, that the commission assist in implementing the regional plan.

#### PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 322 no longer exist. The commission originally proposed to re adopt Chapter 322 in the rules review notice published in the October 20, 2000 issue of the *Texas Register* (25 TexReg 10572) because the chapter provides a mechanism for municipalities to implement a regional wastewater plan. The commission believed this mechanism would advance the policy of the state to encourage and promote the development and use of regional and area-wide wastewater systems (*see, e.g.,* Texas Water Code, §26.003 and §26.081). However, upon further reflection the commission concludes that the rules in this chapter have not proven to be an effective mechanism for promoting regionalization and also believes the rules are unnecessary because there are other more effective mechanisms for promoting regionalization already in place. Chapter 322 was originally adopted in response to a request from the City of Houston to assist in implementing its long-term wastewater regional plan. In the years since its adoption in 1992, neither the City of Houston, nor any other municipality has asked the TNRCC to use the authority under this chapter. During the comment period for the rules review that was published in the October 20, 2000 issue of the *Texas Register*, the commission received one comment. That comment, submitted on behalf of Travis County Water Control and Improvement District No. 17 (District 17), urged the TNRCC to expand the scope of the rules to require the TNRCC to follow regional plans adopted by districts, as well as those adopted by municipalities. Prior to this, in 1998, the commission denied District 17's petition for rulemaking that made the same request.

The commission is committed to promoting the development and use of regional and area-wide wastewater systems as required by the Texas Water Code. For example, in accordance with Texas Water Code, §26.027, and 30 TAC Chapter 305, the TNRCC executive director has revised the wastewater permit application to require applicants to submit detailed explanations regarding whether there is a wastewater treatment and collection system, within three miles of the area to be serviced by the proposed facility, that is willing and able to service the area and, if so, an economic justification as to why the applicant is pursuing a permit rather than connecting to the existing system. Furthermore, Texas Water Code, Chapter 13, Subchapter G, Certificates of Convenience and Necessity, allows districts to apply for certificates of convenience and necessity (CCNs), although districts are not required to obtain such a certificate. The commission has adopted a detailed policy statement and rules that address regionalization through the CCN process (*see* 30 TAC §291.102(b), effective October 19, 2000). Regionalization for districts and other entities is available through this process, as well as through the process set forth in Texas Water Code, Chapter 26, Subchapter C, Regional and Area-wide Systems, to promote regional and area-wide waste collection, treatment, and disposal systems. For these reasons, rather than readopt ineffective and unused rules, the commission proposes the repeal of Chapter 322. The proposed repeal can be found in the Proposed Rules section of this issue of the *Texas Register*.

#### PUBLIC COMMENT

The commission invites public comment on whether the reasons for the rules in Chapter 322 continue to exist. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-039-322-WT. Comments must be received by 5:00 p.m., June 4, 2001. For further information or questions concerning this proposal, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

TRD-200102305  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 23, 2001



#### Texas Workers' Compensation Commission

##### Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in chapter 102 concerning Practice and Procedures - General Provisions. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapter 102. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on June 4, 2001. You may comment by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

#### CHAPTER 102 - PRACTICE AND PROCEDURES - GENERAL PROVISIONS

§102.2. Gifts, Grants, and Donations.

§102.3. Computation of Time.

§102.4. General Rules for Non-Commission Communications.

§102.5. General Rules for Written Communications to and from the Commission.

§102.7. Abbreviations.

§102.8. Information Requested on Written Communications to the Commission.

§102.9 Submission of Information Requested by the Commission.

§ 102.10. Interest, General.

TRD-200102403

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: April 25, 2001



#### Adopted Rule Reviews

##### Texas Commission on Human Rights

###### Title 40, Part 11

The Texas Commission on Human Rights adopts the review of Texas Administrative Code, Title 40, Chapter 321, consisting of §§321.1 - 321.6, concerning General Provisions, pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. The proposed rule review was published in the March 16, 2001, issue of the *Texas Register* (16 TexReg 2201). No comments were received regarding this review.

The Commission reviewed the rules in Chapter 321. As a result of the review process, the Commission proposed a non-substantive amendment to Chapter 321; specifically the deletion of the reference to Article 5221k after a cite to Chapter 21 of the Texas Labor Code. The proposed amendment appears in the Proposed Rules section of this issue of the *Texas Register*.

The Commission has determined that the rules are still essential in effectuating the provisions of Texas Labor Code, Chapter 21, which gives the Commission the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200102246

Katherine A. Antwi

Interim Executive Director

Texas Commission on Human Rights

Filed: April 19, 2001



The Texas Commission on Human Rights adopts the review of Texas Administrative Code, Title 40, Chapter 323, consisting of §§323.1 - 323.9, concerning Commission, pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. The proposed rule review was published in the March 16, 2001, issue of the *Texas Register* (16 TexReg 2201). No comments were received regarding this review.

The Commission reviewed the rules in Chapter 323. As a result of the review process, the Commission proposed a non-substantive amendment to Chapter 323; specifically the deletion of the reference to Article 5221k after a cite to Chapter 21 of the Texas Labor Code. The

proposed amendment appears in the Proposed Rules section of this issue of the *Texas Register*.

The Commission has determined that the rules are still essential in effectuating the provisions of Texas Labor Code, Chapter 21 which gives the Commission the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200102247

Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights adopts the review of Texas Administrative Code, Title 40, Chapter 325, consisting of §§325.1 - 325.5, concerning Local Commissions, pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. The proposed rule review was published in the March 16, 2001, issue of the *Texas Register* (16 TexReg 2202). No comments were received regarding this review.

The Commission reviewed the rules in Chapter 325. As a result of the review process, the Commission proposed a non-substantive amendment to Chapter 325; specifically the deletion of the reference to Article 5221k after a cite to Chapter 21 of the Texas Labor Code. The proposed amendment appears in the Proposed Rules section of this issue of the *Texas Register*.

The Commission has determined that the rules are still essential in effectuating the provisions of Texas Labor Code, Chapter 21 which gives the Commission the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200102248

Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights adopts the review of Texas Administrative Code, Title 40, Chapter 327, consisting of §§327.1 - 327.31, concerning Administrative Review, pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. The proposed rule review was published in the March 16, 2001, issue of the *Texas Register* (16 TexReg 2202). No comments were received regarding this review.

The Commission reviewed the rules in Chapter 327. As a result of the review process, the Commission proposed a non-substantive amendment to Chapter 327; specifically the deletion of the reference to Article 5221k after a cite to Chapter 21 of the Texas Labor Code. The proposed amendment appears in the Proposed Rules section of this issue of the *Texas Register*.

The Commission has determined that the rules are still essential in effectuating the provisions of Texas Labor Code, Chapter 21 which gives the Commission the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200102249

Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



The Texas Commission on Human Rights adopts the review of Texas Administrative Code, Title 40, Chapter 329, consisting of §329.1, concerning Judicial Action, Chapter 331, consisting of §331.1, concerning Reports and Recordkeeping, and Chapter 333, consisting of §333.1, concerning Conformity, pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167. The proposed rule review was published in the March 16, 2001, issue of the *Texas Register* (16 TexReg 2202). No comments were received regarding this review.

The Commission reviewed the rules in Chapters 329, 331, and 333. As a result of the review process, the Commission proposed a non-substantive amendment to Chapters 329, 331, and 333; specifically the deletion of the reference to Article 5221k after a cite to Chapter 21 of the Texas Labor Code. The proposed amendment appears in the Proposed Rules section of this issue of the *Texas Register*.

The Commission has determined that the rules are still essential in effectuating the provisions of Texas Labor Code, Chapter 21 which gives the Commission the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200102250

Katherine A. Antwi  
Interim Executive Director  
Texas Commission on Human Rights  
Filed: April 19, 2001



# IN ADDITION

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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.

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## **Brazos Valley Workforce Development Board**

### **Notice of Request for Written Quotes**

The Brazos Valley Workforce Development Board (BVWDB) seeks Written Quotes from administrative law attorneys to provide legal services to the BVWDB. The Brazos Valley region encompasses Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington Counties. The entire Request for Written Quotes may be downloaded at: [www.bvjobs.org](http://www.bvjobs.org) or requested via telephone at (979) 775-4244 or by writing to P.O. Box 4128, Bryan, Texas 77805, Attention: Request for Legal Services Quote.

All quotes must be received by 4:00 p.m. on Friday, May 27, 2001 at the Brazos Valley Workforce Development Board, 1706 East 29th Street, Bryan, Texas 77802 in accordance with the specifications of the Request for Written Quote.

For more information regarding completion of this Request for Written Quote, contact Patricia Buck (979) 775-4244. Ms. Buck will also respond to written requests for assistance. Written requests for technical assistance may be addressed to BVWDB at P.O. Drawer 4128, Bryan, Texas 77805-4128.

TRD-200102232

Tom Wilkinson

Executive Director

Brazos Valley Workforce Development Board

Filed: April 18, 2001



### **Notice of Request for Written Quotes**

The Brazos Valley Workforce Development Board (BVWDB) seeks Written Quotes from organizations to provide transportation services to Temporary Assistance for Needy Families (TANF) recipients residing within Grimes County. The BVWDB has authorized cost reimbursement funding to be utilized through August 31, 2001. The entire Request for Written Quotes may be downloaded at: [www.bvjobs.org](http://www.bvjobs.org) or requested via telephone at (979) 775-4244 or by writing to P.O. Box 4128, Bryan, Texas 77805, Attention: Request for Transportation Quote.

All quotes must be received by 4:00 p.m. on Friday, May 27, 2001 at the Brazos Valley Workforce Development Board, 1706 East 29th

Street, Bryan, Texas 77802 in accordance with the specifications of the Request for Written Quote.

For more information regarding completion of this Request for Written Quote, contact David Pfannstiel at (979) 775-4244. Mr. Pfannstiel will also respond to written requests for assistance. Written requests for technical assistance may be addressed to BVWDB at P.O. Drawer 4128, Bryan, Texas 77805-4128.

TRD-200102233

Tom Wilkinson

Executive Director

Brazos Valley Workforce Development Board

Filed: April 18, 2001



### **Request for Proposals for Year-Around Youth Services**

On April 27, 2001, the Brazos Valley Workforce Development Board (BVWDB) will be officially releasing a Request for Proposals (RFP) for Workforce Investment Act (WIA) comprehensive year-around youth services for PY2001. The RFP can be downloaded at: [www.bvjobs.org](http://www.bvjobs.org) or requested: Phone number: (979) 775-4244; or write P.O. Box 4128, Bryan, Texas 77805, Attention: Request for Youth RFP.

The purpose of this RFP is to procure contractors to provide comprehensive year around services to youth in the Brazos Valley Workforce Development Area excluding areas already served by Bryan ISD, Navasota ISD, Buffalo ISD, Madisonville Consolidated ISD and Robertson County Special Services Co-Op. The RFP contains the necessary background, requirements, instructions, and information necessary to prepare a proposal to provide requested services. The deadline for proposals is 4:00 P.M. CST on June 15, 2001.

A Bidder's Conference will be held on May 8, 2001 at 1:30 A.M. CST at the Brazos Valley Council of Government, Large Conference Room, 1706 East 29th Street, Bryan, Texas. The Bidder's Conference is to explain or clarify this RFP and to answer other questions. Attendance at the conference is not mandatory, but it is strongly recommended. No further technical assistance will be provided.

TRD-200102231

Tom Wilkinson  
Executive Director  
Brazos Valley Workforce Development Board  
Filed: April 18, 2001

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## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. 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 March 16, 2001, through April 5, 2001. The public comment period for these projects will close at 5:00 p.m. on May 7, 2001.

#### FEDERAL AGENCY ACTIONS

**Applicant:** The George R. Brown Partnership; **Location:** The project site is located in adjacent wetlands located to the east of Star Bayou and approximately 400 feet north of an oxbow of the Neches River, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Beaumont East, Texas. Approximate UTM Coordinates: Zone 15; Easting: 400510; Northing: 3326677. CCC Project No.: 01-0114-F1; **Description of Proposed Action:** The applicant proposes to fill approximately 5.3 acres of emergent marsh to install, operate, and maintain a 350-foot by 240-foot drill site jurisdictional wetlands. An access road will be constructed from an existing well site (Department of Army Permit 11898) to the proposed well location. The dimensions of the access road will be approximately 4,900 feet long and 30 feet wide. Approximately 22,400 cubic yards of clean fill material will be imported by truck to construct the road and drill pad. **Type of Application:** This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Applicant:** C-Port Galveston, L.P. ; **Location:** The project site is located immediately east of the Halliburton Energy Service Facility located at 1800 Pelican Island Boulevard in Galveston, Galveston County, Texas, in the Galveston Channel. The project can be located on the U.S.G.S. quadrangle map entitled Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 326989; Northing: 3245002.; CCC Project No.: 01-0115-F1; **Description of Proposed Action:** The applicant proposes to construct a 5,422-foot-long steel sheet-pile bulkhead with a 160-foot by 990.5 foot wide section that will include 9 excavated boat slips with steel sheet-pile bulkheads. The boat slips will be covered by a 125-foot-long by 1,030-foot-wide section of a 350-foot-long by 1,030-foot-wide building. The applicant also proposes new work hydraulic dredging of 918,900 C. Y. total dredge volume, with dredged materials placed in existing dredged material placement areas on Pelican Island, and placement of 1,416 C. Y. total volume of fill in their fill areas totaling 33,732 square feet. **Type of Application:** This application is being evaluated under Section 404 of the Clean Water Act.

**Applicant:** San Luis West, Inc.; **Location:** The project is located at Churchill Bayou and Cold Pass, in an adjacent man-made canal and adjacent wetlands near Freeport, Brazoria County, Texas. The project site can be located on the U.S.G.S. quadrangle map entitled Christmas Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 291400; Northing: 3216500. CCC Project No.: 01-0116-F1; **Description of Proposed Action:** The applicant proposes to both modify and extend the time to conduct work under the Department of the Army (DA) Permit 18674, which expired on December 31, 1993. The permit authorized a dredging and filling operation, construction of bulkheads, walkways, piers and a road in and adjacent to an existing canal. **Type of Application:** This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.;

**Applicant:** Texas Department of Transportation - Beaumont District; **Location:** The project site is located in the Port Arthur Canal (Sabine Neches River). The project can be located on the U.S.G.S. quadrangle map entitled Port Arthur South, Texas. Approximate UTM Coordinates: Zone 15; Begin Project: Easting: 408000; Northing: 3300500, End Project: Easting: 411300; Northing: 3292500.; CCC Project No.: 01-0117-F1; **Description of Proposed Action:** The applicant proposes to perform shoreline stabilization activities, as needed, along approximately 9 miles of the east and west shorelines of the Port Arthur Canal. Newly eroded areas arise daily, depending on marine traffic in the channel, and must be stabilized to prevent erosion of both shorelines of the Port Arthur Canal along SH 82 and SH 87. On an as-needed basis, the applicant proposes to place rip-rap, in the form of broken concrete material, below mean high tide (MHT) at various locations where the roadway is threatened by erosion. No single location would exceed 750 cubic yards of fill material below MHT or 500 feet in length as measured parallel to the roadways. **Type of Application:** This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Applicant:** Mr. Roy G. Shaw, Jr.; **Location:** The project site is located at 2803 Bayshore Drive, Bacliff, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Bacliff, Texas. Approximate UTM Coordinates: Zone 15; Easting: 306344; Northing: 3267385. CCC Project No.: 01-0118-F1; **Description of Proposed Action:** The applicant proposes to retain an existing 240-foot by 4-foot pier and 1,200-square-foot boatlift. He also proposes to construct a 318-foot by 4-foot addition to the existing pier and construct a 1,008-square-foot boatlift at the end of the proposed pier addition. The total surface area of the structure, both existing and proposed, will be 4,400 square feet. **Type of Application:** This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

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](mailto: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-200102395  
Larry R. Soward  
Chief Clerk, General Land Office  
Coastal Coordination Council  
Filed: April 25, 2001

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## Notice of Funds Availability

### Texas Coastal Management Program Grants Program

The Coastal Coordination Council files this Notice of Funds Availability to announce the availability of federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately \$2 million is expected in October 2002. The Coastal Coordination Council, which oversees the implementation of the CMP, passes through 90% of the available funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

### Eligible Applicants

The following entities are eligible to receive grants under the CMP: 1. Incorporated cities in the coastal zone; 2. County governments in the coastal zone; 3. Texas state agencies; 4. Texas public universities (including colleges and institutions of higher education); 5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone); 6. Councils of governments and other regional governmental entities in the coastal zone; 7. The Galveston Bay Estuary Program; 8. The Corpus Christi Bend Bays and Estuary Program (306 projects only); and 9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above (306 projects only). A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

### Funding Categories

The Council will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference: 1. Coastal Natural Hazards Response; 2. Critical Areas Enhancement; 3. Shoreline Access; 4. Water Quality Improvement; 5. Waterfront Revitalization and Ecotourism Development; 6. Permit Streamlining/Assistance and Governmental Coordination; 7. Information and Data Availability; and 8. Public Education and Outreach.

Staff will conduct workshops on the coast to help potential applicants through the revised grant guidance document and application. All potential applicants are strongly encouraged to attend the workshops. The workshops usually take one to two hours.

May 9, 2001, 1:30 p.m., Port Lavaca, City Hall, 202 N. Virginia.

May 15, 2001, 1:30 p.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 16, 2001, 9:00 a.m., South Padre Island, SPI Visitors Bureau, Conference Room, 600 Padre Boulevard.

May 22, 2001, 1:00 p.m., Galveston, Holbrook Annex Building, Hearing Room, 601 Tremont (corner of 23rd and Church).

May 23, 2001, 9:30 a.m., Port Arthur, City Hall, 444 4th Street, 5th Floor.

To obtain a copy of the Proposal Guidance and Application Package, please contact Melissa Porter at (512) 475-1393 or (888) 998-4GLO, email: melissa.porter@glo.state.tx.us or Adriana Gonzales at (512) 305-9151, email: adriana.gonzales@glo.state.tx.us. The requirements to receive federal grant funds are outlined in the guidance. Written requests for the Proposal Guidance and Application Package should be addressed to: Coastal Coordination Council, CMP Grants Program,

c/o Texas General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701-1495. The Proposal Guidance and Application Package is also available on the GLO's Home Page on the World Wide Web at: <http://www.glo.state.tx.us/coastal/grants/index.html>.

The deadline for receiving grant pre-proposals is 5:00 p.m., Wednesday, June 20, 2001. (An applicant must submit a pre-proposal in order to submit a final application.) The deadline for receiving final grant applications is 5:00 p.m., Wednesday, October 10, 2001. Grant pre-proposals and applications must be mailed (regular, express, or certified) or hand-delivered to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, Stephen F. Austin Building, Room 617, 1700 North Congress Avenue, Austin, Texas 78701-1495. Facsimile and electronic mail transmissions of grant pre-proposals and applications will not be accepted.

TRD-200102399

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: April 25, 2001

## Comptroller of Public Accounts

### Revised Notice of Intent to Amend Consultant Contract

Notice of Amendment: Pursuant to Chapter 2254, Chapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intention to amend and extend the term of an existing consulting contract.

The Comptroller issued its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller to assist Comptroller in conducting financial management reviews, including information technology (IT) solutions reviews and electronic infrastructure, of selected local government services of four city and four county governments throughout the state. The RFP was issued on May 26, 2000. The notice of request for proposals (RFP #107a) was published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4918). The Notice of Award was published in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7072).

The contract was awarded to: Resource Consultants, Inc., 3600 Bee Caves Road, Suite 201, Austin, Texas 78746. The total amount of the original contract is not to exceed \$250,000.00. The project will culminate in final reports due no later than August 31, 2001.

The term of the original contract is July 14, 2000 through December 31, 2000. This amendment extends the term of the contract through August 31, 2001.

For further information, please contact: William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas, 78774, telephone number: (512) 936-5854, fax: (512) 475-0973, or by e-mail at (contracts@cpa.state.tx.us).

TRD-200102379

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: April 24, 2001

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/30/01 - 05/06/01 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 04/30/01 - 05/06/01 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200102373

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 24, 2001

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## Deep East Texas Workforce Development Board

### Request for Proposals

The Deep East Texas Local Workforce Development Board is accepting applications for providers of occupational skills training for adults and dislocated workers in the 12-county Deep East Texas Region, under the Federal employment and training program, the Workforce Investment Act.

Applications and further information can be obtained by contacting:

Sarah Milligan

Deep East Texas Local Workforce Development Board, Inc.

1318 S. John Redditt, Suite C

Lufkin, Texas 75904

(936) 639-8898

FAX: (936) 633-7491

Email: sarah.milligan@twc.state.tx.us

TRD-200102396

Charlene Meadows

Executive Director

Deep East Texas Workforce Development Board

Filed: April 25, 2001

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### Request for Proposals

The Deep East Texas Local Workforce Development Board is seeking qualified entities to enter into a contract to provide the following services on an individual referral basis for the period July 1, 2001 through June 30, 2004:

1. Occupational skills training for persons funded under the Workforce Investment Act Youth program, Welfare-to-Work program, and Temporary Assistance to Needy Families program. Occupational skills training is education/training of generally two years or less in a program that leads to a degree, certification, or licensure that prepares an individual to enter employment in an occupation on the targeted occupation list for Deep East Texas.
2. Intensive services for persons funded under the Workforce Investment Act, Welfare-to-Work program, and Temporary Assistance

to Needy Families program. Intensive services are those programs or courses lasting six months or less, not leading to a degree, certification, or licensure that prepare an individual to enter/re-enter employment or training. Examples of intensive services are English as a second language, GED preparation, basic skills/literacy, tutoring, and computer literacy. (Note: If any of these services are provided in conjunction with occupational skills, they are not intensive services but are classified as training and a separate Training Provider application must be submitted.)

Qualified programs/services are those offered to the general public at a specified cost. Eligible entities include secondary and post-secondary education agencies; adult, literacy, and continuing education providers; for-profit and not-for-profit providers; and community-based and charitable/faith-based organizations. Interested parties must submit a completed Request for Information form and meet minimum criteria for service providers set by the Board.

A Request for Information can be obtained by contacting:

Sarah Milligan

Deep East Texas Local Workforce Development Board, Inc.

1318 S. John Redditt, Suite C

Lufkin, Texas 75904

(936) 639-8898

FAX: (936) 633-7491

Email: sarah.milligan@twc.state.tx.us

TRD-200102397

Charlene Meadows

Executive Director

Deep East Texas Workforce Development Board

Filed: April 25, 2001

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## Texas Education Agency

### Request for Applications Concerning Public Law 103-382, Elementary and Secondary Education Act (ESEA) Title I, Part A - Capital Expenses, 2001 - 2002

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) # 701-01-019 from school districts that have incurred capital expenses since July 1, 1995, or will incur such expenses during the 2001-2002 school year, as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton* in providing Title I, Part A, services to students attending private, religiously affiliated schools.

Description. Under Public Law 103-382, Elementary and Secondary Education Act (ESEA), Title I, Part A, §1120(e), the term "capital expenses" means expenditures for noninstructional goods and services, such as: the purchase, lease, rental, and renovation of real and personal property (including, but not limited to, mobile educational units and leasing of neutral sites or space); insurance and maintenance costs; transportation; technician costs for the supervision of computer-assisted instruction (CAI); and other comparable goods and services. Under Title 34, Code of Federal Regulations (CFR), §200.16, capital expenses do not include the purchase of instructional equipment such as computers. However, if the local education agency (LEA) has used Title I, Part A, funds for capital expenses items such as those listed previously, the LEA may apply to be reimbursed for these items. Because reimbursement funds are replacing Title I, Part A, funds that were



removed from the instructional program in order to pay for capital expenses, the reimbursement funds must be put back into the instructional program. In this case, requests for instructional equipment, supplies, and services may be included in the application. If funds remain after all requests for current-year capital expenses are met, requests for instructional items will be considered.

**Dates of Project.** The Title I, Part A - Capital Expenses project will be implemented during the 2001-2002 school year, starting no earlier than July 1, 2001, and ending no later than June 30, 2002.

**Project Amount.** The projected state total available for these projects is \$217,810. These projects are funded 100% from ESEA, as amended by Public Law 103-382, Title I, Part A, Capital Expenses.

**Selection Criteria.** Applications submitted in response to this RFA must address all required components of the RFA. Applications are non-competitive and will be selected according to the following criteria:

(1) Requests for funding to meet current-year capital expenses will be categorized as Priority 1.

(2) Requests for funding to reimburse the Title I, Part A, program for prior-year capital expenses will be categorized as Priority 2. Only requests for prior-year expenses from school years 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, and 2000-2001 will be considered under Priority 2.

If the level of funding is insufficient to fund all eligible applicants under Priority 1, a ratably reduced share will be granted for Priority 1 expenses and no funds will be distributed under Priority 2. 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 incurred 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 # 701-01-019 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494; 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 Vivian Smyrl, Division of Student Support Programs, TEA, (512) 463-9374.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, June 28, 2001, to be considered.

TRD-200102400

Criss Cloudt

Associate Commissioner, Accountability Reporting and Research

Texas Education Agency

Filed: April 25, 2001

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## Texas Department of Health

### Licensing Actions for Radioactive Materials

#### LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

#### NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Midlothian	North Texas Cement Company	L05424	Midlothian	00	04/04/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	25	04/11/01
Carrollton	Stmicorelectronics Inc	L03930	Carrollton	15	04/04/01
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	24	04/03/01
Dallas	Texas Cardiology Consultants	L04997	Dallas	18	03/30/01
Dallas	Clearsky MRI and Diagnostic Center	L05201	Dallas	06	04/10/01
Houston	PET Net Pharmaceutical Services Inc	L05342	Houston	01	03/29/01
Houston	Memorial Hermann Hospital System	L00439	Houston	73	04/11/01
Irving	Baylor Medical Center at Irving	L02444	Irving	35	03/30/01
Irving	Cor Specialty Associates of North Texas PA	L05373	Irving	01	03/29/01
Irving	Baylor Medical Center at Irving	L02444	Irving	36	04/04/01
Jacksonville	Regional Health Care Center	L05362	Jacksonville	03	04/09/01
Lake Jackson	Brazosport Cardiology	L05359	Lake Jackson	03	03/29/01
Laredo	Ricardo G Cigarroa MD	L04687	Laredo	03	03/29/01
Lewisville	Columbia Med Ctr of Lewisville Subsidiary Inc.	L02739	Lewisville	29	04/04/01
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	05	04/09/01
Midland	Tracer-Tech Services	L05375	Midland	02	04/06/01
Midland	West Texas Medical Center	L04729	Midland	09	04/12/01
Orange	Central Pharmacy Services Inc	L04785	Orange	18	03/29/01
Orange	Central Pharmacy Services Inc	L04785	Orange	19	04/12/01
Pasadena	Cardiovascular Center Pa	L04345	Pasadena	08	04/11/01
Richmond	Polly Ryon Hospital Authority	L02406	Richmond	25	04/01/01
Richmond	Polly Ryon Hospital Authority	L02406	Richmond	26	04/10/01
San Angelo	Shannon Clinic	L04216	San Angelo	17	04/12/01
San Antonio	CTRC Research Foundation	L03350	San Antonio	28	03/29/01
San Antonio	University of San Antonio	L01962	San Antonio	43	04/02/01
San Antonio	Santa Rosa Health Care	L02237	San Antonio	64	04/06/01
San Antonio	CTRC Research Foundation	L03350	San Antonio	29	04/06/01
Tahoka	Lynn County Hospital District	L03383	Tahoka	15	04/12/01
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	66	04/10/01
Throughout Tx	Fugro South Inc	L04322	Channelview	51	04/10/01
Throughout Tx	PET Scans of America Corp	L05406	Coldspring	01	04/13/01
Throughout Tx	American Casedhole Specialist Inc	L05291	Corpus Christi	01	03/30/01
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	43	04/13/01
Throughout Tx	General Inspection Services Inc	L02319	Hempstead	33	04/09/01

(CONT) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Throughout TX	Cooperheat -MQS Inc	L00087	Houston	85	04/04/01
Throughout Tx	Professional Service Industries Inc	L04942	Houston	10	04/06/01
Throughout Tx	Ground Technology Inc	L05125	Houston	03	04/09/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	163	04/11/01
Throughout Tx	Non Destructive Inspection	L02712	Lake Jackson	89	04/05/01
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	90	04/11/01
Throughout Tx	Bayer Corporation	L00976	Orange	45	04/16/01
Throughout Tx	Superior Testing Services	L05145	Pasadena	19	04/05/01
Throughout Tx	Superior Testing Services	L05145	Pasadena	20	04/04/01
Throughout Tx	Intec	L05150	San Antonio	04	04/13/01
Throughout Tx	Newpark Environmental Services of Texas LP	L04999	Winnie	05	04/06/01
Tyler	Nutech Inc	L04274	Tyler	32	04/02/01
Tyler	H&H X-Ray Services Inc	L02516	Tyler	34	04/09/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Fort Worth	Computalog Wireline Services Inc	L04286	Fort Worth	39	03/29/01
Fort Worth	NDE Inc	L02355	Fort Worth	19	04/06/01
Galveston	Galveston Laboratories	L02970	Galveston	04	04/05/01
Levelland	Covenant Hospital Levelland	L02925	Levelland	16	04/12/01
Odessa	Pro Inspection Inc	L03906	Odessa	16	04/04/01
San Angelo	Shannon Clinic	L04216	San Angelo	16	04/11/01
Throughout Tx	Reinhart and Associates Inc	L03189	Austin	35	03/30/01

NEW LICENSES DENIED:

Location	Name	License #	City	Amend -ment #	Date of Action
McAllen	Rio Grande Heart Specialist Inc		McAllen		04/09/01

LICENSES AMENDMENTS DENIED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	H&G Inspection Company Inc	L02881	Houston		04/05/01

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Austin	Thermo Finnigan Corporation	L01186	Austin		04/09/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions pursuant to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200102376  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: April 24, 2001

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**Texas Health and Human Services Commission**

**Consultant Contract Award Notice**

In compliance with the provision of Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission ("HHSC") furnishes this notice of consultant contract award. The special legislative committee reviewing Medicaid program costs requested the analysis to be provided by the consultant. Due to the committee's schedule and the short timeframe in which it needed the consultant's services, HHSC requested and obtained from the office of the Governor an emergency waiver of statutory posting and notice requirements relating to consulting contracts under section 2254.025, Government Code.

The consultant will provide an independent review of certain utilization patterns and costs for certain aspects of the state Medicaid program. In particular, the consultant will provide a comprehensive analysis of Medicaid utilization and cost data using software proprietary to the consultant and specialized analytical processes that the consultant is uniquely qualified to provide. In addition, the consultant will identify opportunities to reduce program costs through implementation of changes recommended by the consultant for consideration by HHSC and the Texas Legislature.

The contract was awarded to Muse & Associates, Inc. a corporation incorporated in the State of Maryland and having its principal office at

1775 I Street NW, Washington, D.C. 20006, for a total amount of not to exceed \$24,900.

The beginning date of the contract is March 22, 2001 and the ending date is March 30, 2001. All written reports from the consultant are due by March 30, 2001.

TRD-200102370  
Marina S. Henderson  
Executive Deputy Commissioner  
Texas Health and Human Services Commission  
Filed: April 23, 2001

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**Texas Department of Housing and Community Affairs**

**Notice of Administrative Hearing**

**Manufactured Housing Division**

**Wednesday, May 9, 2001, 9:00 a.m.**

State Office of Administrative Hearing, Stephen F. Austin Building,  
1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

**AGENDA**

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Morgan Housing, Inc. dba Morgan Homes to hear alleged violations of Sections 4(f) (amended September 1999) (current version at Section 4(d) of the Act), 7(d), 7(j)(7), 14(f), and 14(j) of the Act and Sections 80.51 (amended 1998) (current version found at Section 80.54(a) of

the Act), 80.131(b), 80.132(3), 80.132(6) (amended 1998) (current version at Section 80.132(3) of the Rules) of the Rules in regards to not properly complying with the initial report and warranty orders of the Director and providing the Department with copies of completed work orders on two manufactured homes; not properly installing a manufactured home; and furnishing the Department with false information on a report. SOAH 332-01-2621. Department MHD1998002428W, MHD1999001000HB and MHD2000000818IV.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-200102401

Daisy A. Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: April 25, 2001



## Houston-Galveston Area Council

### Request for Qualifications Submittal for Regional Travel Model Application Assistance

The Houston-Galveston Area Council (H-GAC) is requesting qualifications submittals for assistance to H-GAC staff in the application of urban regional travel models and development of model input data.

Qualifications will include, but are not limited to: previous related work experience, availability of personnel, adequate technical resources to complete project on schedule, and references, three minimum. Qualification Statements are due by 12:00 noon on May 28, 2001. Ten typewritten, bound/stapled and signed copies are required.

Interested firms may obtain the Request for Qualifications Submittal via H-GAC's website ([www.hgac.cog.tx.us/transportation](http://www.hgac.cog.tx.us/transportation)). Telephone requests, (713) 627-3200, must be followed up by written requests or faxed to (713) 993-4508.

TRD-200102381

Alan Clark

MPO Director

Houston-Galveston Area Council

Filed: April 24, 2001



## Texas Department of Human Services

### Availability of Funds

The Texas Department of Human Services (DHS) announces the availability of funds to provide services to domestic violence victims through nonresidential centers as defined in Chapter 51 of the Human Resources Code (HRC). Chapter 51 HRC was recently amended through Texas Senate Bill 47, which was signed by the Governor on April 11, 2001. Funds will be awarded on a noncompetitive procurement basis to organizations that meet the eligibility requirements outlined in Chapter 51 HRC as amended.

To be eligible for funding as a nonresidential center the applicant must be a program that is operated by a public or private nonprofit organization. The nonresidential center must provide as its primary purpose direct delivery of family violence services to adult victims. It must have provided comprehensive nonresidential services to adult victims of domestic violence for at least one year before the date on which the contract is awarded. Comprehensive services are defined in HRC §51.005 (b)(3) as the following:

(A) Access to a 24-hour-a-day shelter

(B) Access to a 24-hour-a-day crisis hotline operated by the nonresidential center or another organization located in the nonresidential center's service area

(C) Access to emergency medical care

(D) Intervention services including safety planning, understanding and support, information, education, referrals and other resource assistance

(E) Access to emergency transportation

(F) Legal assistance in the civil and criminal justice systems including

(i) identifying individual needs, legal rights and legal options; and

(ii) providing support and accompaniment in pursuing those options

(G) Information about educational arrangements for children

(H) Information about training for and seeking employment

(I) Cooperation with criminal justice officials

(J) Community education

(K) A referral system to existing community services

(L) A volunteer recruitment and training program

In order to apply for FY 2002 funding, contract year September 1, 2001-August 31, 2002, applicants must submit a letter of interest with documentation of the organization's 501(c)(3) status to the DHS Family Violence Program by 5:00 PM C.S.T. on Friday May 25, 2001. The letter of interest should be brief, one to two pages, and include confirmation that the organization will have provided the services defined in HRC §51.005 (b)(3) for at least one year before the start of the contract. After submitting the letter of interest, each applicant will receive an application packet from the DHS Family Violence Program.

Letters of interest should be submitted to Karen Parker, Family Violence Program Coordinator, DHS Family Violence Program, PO Box 149030 MC W-230, Austin, TX 78714-9030. Questions should be directed to Ms. Parker at 512-438-2239.

TRD-200102398

Paul Leche

General Counsel

Texas Department of Human Services

Filed: April 25, 2001



### Public Meeting on Proposed Revision to Community Based Alternatives Bypass Rule

The Texas Department of Human Services (DHS) will hold a public meeting to receive public input on a proposed revision to the Community Based Alternatives (CBA) client eligibility bypass rule for individuals that are residents of a nursing facility. The revised rule will require an individual to be a permanent resident of a nursing facility before he can bypass the interest list.

The meeting will be held on May 7, 2001, from 9:00 a.m. to 12:00 p.m., at the Texas Department of Human Services in Public Hearing Room 125, Winters Building, 701 West 51st Street, Austin, Texas. Individuals unable to provide input in person may address written comments to the attention of Gerardo Cantu, Texas Department of Human Services, Community Care W-521, P.O. Box 149030, Austin, Texas 78714-9030 until 5:00 p.m. the day of the meeting.

If you have any questions, please contact Gerardo Cantu at (512) 438-3693. Issued in Austin, Texas, on April 24, 2001.

TRD-200102391

Paul Leche  
General Counsel  
Texas Department of Human Services  
Filed: April 24, 2001

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**Texas Department of Insurance**

**Insurer Services**

Application for incorporation to the State of Texas by INSURORS INDEMNITY LLOYDS, a domestic lloyds company. The home office is in Waco, Texas.

Application for incorporation to the State of Texas by PEMBROKE LLOYDS, a domestic lloyds company. The home office is in Dallas, Texas.

Application for incorporation to the State of Texas by R.V.I. AMERICA INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Stamford, Connecticut.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200102402  
Judy Woolley  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: April 25, 2001

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**Texas Natural Resource Conservation Commission**

**Correction of Error**

The Texas Natural Resource Conservation Commission (TNRCC) proposed new Chapter 15, concerning fleet vehicle management. The rules appeared in the April 20, 2001, *Texas Register* (26 TexReg 2943). The TNRCC filed the wrong version of proposed text. Corrections are noted as follows.

In the preamble on page 2943, in the first paragraph under the heading "BACKGROUND AN SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE, the sentence reads, "This section requires state agencies to adopt rules consistent with the fleet management plan developed by the State Council on Competitive Government" The correct sentence should read as follows. "The section requires state agencies to adopt rules consistent with the fleet management plan (Management Plan) developed in accordance with Texas Government Code, §2171.104."

In the preamble on page 2943, the second paragraph under the same heading reads, "The rule describes under what circumstances a commission vehicle may be assigned to an individual. If the exceptions outlined in the rule are not met, then the rule stipulates that each vehicle the commission owns must be assigned to the commission motor pool." The correct paragraph should read as follows.

"The rule is consistent with the Management Plan, and requires the executive director to adopt a policy consistent with the Management Plan. The rule describes under what circumstances a commission vehicle may be assigned to an individual. If the exceptions outlined in the rule are not met, then the rule stipulates that each vehicle the commission owns must be assigned to the commission motor pool."

In the preamble on page 2943, there are three paragraphs under the heading "SECTION BY SECTION DISCUSSION". A fourth paragraph was omitted which should read as follows.

"New proposed §15.1(c) establishes that the ED will adopt an operating policy that is consistent with the Management Plan developed in accordance with Texas Government Code, §2171.104."

On page 2944, subsection (c) was omitted from the text of §15.1. The new language should read as follows.

**"(c) The executive director shall adopt an operating policy that is consistent with the Management Plan developed in accordance with Texas Government Code, §2171.104."**

TRD-200102371

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**Notice of Non-Adjudicatory Public Hearing (TMDL)**

The Texas Natural Resource Conservation Commission (TNRCC or commission) has made available for public comment a draft implementation plan concerning dissolved nickel in the Houston Ship Channel System in Harris County, Texas. The designated water quality segments that comprise the Houston Ship Channel System are the San Jacinto River Tidal (Segment 1001), Houston Ship Channel (Segments 1005, 1006, and 1007), Buffalo Bayou (Segments 1013 and 1014), Greens Bayou Above Tidal (Segment 1016), Whiteoak Bayou Above Tidal (Segment 1017), Tabbs Bay (Segment 2426), San Jacinto Bay (Segment 2427), Black Duck Bay (Segment 2428), Scott Bay (Segment 2429), Burnett Bay (Segment 2430), and Barbour's Cut (Segment 2436). The TNRCC will also conduct a non-adjudicatory public hearing to receive comments on the implementation plan.

Some of the segments that comprise the Houston Ship Channel System were at one time identified on Texas' Clean Water Act, §303(d), List of impaired water bodies. As required by §303(d) of the federal Clean Water Act, Total Maximum Daily Loads (TMDLs) were developed for dissolved nickel. The TMDLs were adopted by the commission on August 11, 2000 as updates to the State Water Quality Management Plan. Upon adoption by the commission, the TMDLs were submitted to the United States Environmental Protection Agency for review and approval.

A non-adjudicatory public hearing will be held in Houston on May 31, 2001, at 7:00 p.m., at the City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing. The purpose of the public hearing is to provide the public an opportunity to comment on the proposed plan. The commission requests comments on each of the six major components of the implementation plan: Description of Control Actions and Management Measures, Legal Authority, Implementation Schedule, Follow-up Monitoring Plan, Reasonable Assurance, and Measurable Outcomes. After the public comment period, the TNRCC staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the commission's web site at <http://www.tnrcc.state.tx.us/water/quality/tmdl>. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

Written comments should be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., June 4, 2001, and should reference 2001-0429-TML. For further information regarding this proposed TMDL implementation plan, please contact Larry Koenig, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4533. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's web site or by calling Joyce Spencer at (512) 239-5017.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200102394  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 25, 2001



### Notice of Proposal to Registry and Land Use Meeting

The Texas Natural Resource Conservation Commission (TNRCC or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that 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 most recent registry listing of these facilities was published in the November 24, 2000 issue of the *Texas Register* (25 TexReg 11756).

Pursuant to §361.184 (a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the TNRCC hereby gives notice of a facility or area that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the TNRCC also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified below. The TNRCC proposes a commercial/industrial land use designation. Determination of future land use will impact the remedial investigation and remedial action for the site.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on May 4, 2001, in the *Houston Chronicle*.

The facility proposed for listing is the ArChem Company/Thames Chelsea Chemical Company USA Site (ArChem Site), located at 13103 Conklin Lane, Houston, Harris County, Texas. The geographic coordinates of the site are 29°, 36 minutes, 47 seconds North Latitude and 95°, 11 minutes, 56 seconds West Longitude. The description of the site (release) is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS) and subsequent information provided by the United States Environmental Protection Agency (EPA). The description may change as additional information is gathered on the sources and extent of contamination. The HRS is the principal screening guide used by the TNRCC to evaluate potential, relative risk to public health and the environment from releases or

threatened releases of hazardous substances. According to the HRS report, contaminants detected in surface water at the facility or downhill from it include toluene, isophorone, antimony triacetate (S-21), bis-(2-ethylhexyl) phthalate, and furfural aldehyde, which constitute only a few of the many chemicals of concern which have been identified for the ArChem Site. Contaminants detected in the groundwater at the facility include barium, chromium, bis-(2-ethylhexyl) phthalate, and 1,1,2,2-tetrachloroethane, which constitute only a few of the many chemicals of concern which have been identified for the ArChem Site. Removal actions by the TNRCC, its predecessor agency, the Texas Water Commission (TWC), and the EPA were performed between September 1992 and August 1995, and included removing from the site: 1) all drums of liquid/sludge and/or solid chemical wastes; 2) all surface reactor or storage vessels containing residual chemical wastes; 3) various size process piping containing residual chemical process wastes; and 4) all chemical-waste-contaminated water and sludge from an on-site liquid separator. All of these wastes appeared to have originated from the historic specialty chemical manufacturing operations conducted at the site.

The ArChem site is located at the intersection of Conklin Lane and Beltway 8, which is approximately 1/2 mile northwest of the intersection of State Highway 3 and Interstate 45 in Southeast Houston, Harris County, Texas. The ten-acre site which was formerly a specialty chemical manufacturing facility is currently abandoned and fenced with posted warning signs. The site has been inactive since 1991.

A public meeting will be held Tuesday, June 12, 2001, at 7:00 p.m. at Dobie High School, 11111 Beamer Road in Houston. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility subject of this notice is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

Written comments may also be submitted to the attention of Rob Conti, Texas Natural Resource Conservation Commission, Superfund Cleanup Section, Remediation Division, MC-143, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-2449. All comments must be received by the commission by 5:00 p.m., June 12, 2001. For further information, please contact Rob Conti at (800) 633-9363 or (512) 239-2495.

The executive director of the TNRCC prepared a brief summary of the commission's records regarding this site. This summary and a portion of the records for this site, including documents pertinent to the executive director's determination of eligibility, are available for review at the Houston Public Library, Bracowell Branch, 10115 Kleckley, Houston, Texas 77075, (713)-948-9052, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the TNRCC Records Management Center, Building D, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone number (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

Handicapped parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

TRD-200102393  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 25, 2001



## Notice of Public Hearing

The Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony concerning amendments to 30 TAC Chapter 106, Subchapters A, G, K, O, and T concerning Permits by Rule (PBR) and a revision to the State Implementation Plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs. Subchapter A will be submitted as a revision to the SIP.

The recordkeeping requirements of the proposed new §106.8 are necessary for users of PBRs to demonstrate compliance with the requirements of the PBR claimed and the general requirements of §106.4. Proposed new §106.263 is necessary to prevent the authorization of significant accumulation of maintenance related emissions through repeated uses of the permit by rule. The amendment to §106.355 is necessary to ensure that venting of pipelines can be demonstrated to be within the restrictions of the section and that exceedances of those limits are recorded and reported. The amendments to §106.181 and §106.454 are necessary to clarify existing rule language and applicability.

A public hearing on the proposal will be held May 29, 2001, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission, Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Ms. Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received on June 4, 2001, and should reference Rule Log No. 2000-051-106-AI. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ms. Jill Burditt at (512) 239-0560.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200102320  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 23, 2001

## Notice of Public Meeting

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public meeting to receive comments concerning amendments to 30 TAC Chapter 279, Water Quality Certification.

Chapter 279 modifies procedures for public notice and the review of applications for water quality certification. On August 17, 2000, TNRCC signed a Memorandum of Agreement (MOA) with the U.S. Army Corps of Engineers (Corps) to implement a process for interagency cooperation and commission review of permits issued under the Clean Water Act, §401. These proposed amendments to Chapter 279

would more effectively implement the provisions of the MOA; revise waiver procedures for Clean Water Act, §401, Certification; amend enforcement provisions; and modify existing language to be consistent with other commission rules.

A public meeting on this proposal will be held in Austin on June 5, 2001 at 2:00 p.m. at the commission's central office, Building F, Room 2210, located at 12100 Park 35 Circle. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the meeting; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the meeting and will answer questions before and after the meeting.

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

Written comments may be submitted to Lola Brown, MC 205, TNRCC, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2000-031-279-WT. Comments must be received by 5:00 p.m., June 5, 2001. For further information, please contact Alan Henderson, Policy and Regulations Division, (512) 239-1510.

TRD-200102299  
Margaret Hoffman  
Director, Environmental Law Division  
Texas Natural Resource Conservation Commission  
Filed: April 23, 2001

## North Central Texas Council of Governments

### Request for Proposals to Develop a Public Transportation Strategic Plan for the City of Grand Prairie

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments is requesting written proposals from consultants to develop a public transportation system strategic plan for the City of Grand Prairie. The plan should include short, medium, and long-range public transportation system options. The public transportation needs of the general population of Grand Prairie should be examined, as well as the following targeted markets: low income, elderly, persons with disabilities, students, and commuters. The feasibility of the City of Grand Prairie to form or join a transportation authority should also be quantified and assessed.

### Due Date

Proposals must be submitted no later than 5 p.m., Central Time, on Friday, May 25, 2001, to Barbara Maley, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. For more information and to obtain copies of the Request for Proposals, contact Barbara Maley at (817) 695-9278.

### Contract Award Procedures

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the



PRC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000(d) to 2000(d)(1); and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200102374

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: April 24, 2001

### **North Texas Tollway Authority**

#### Request for Qualifications Evergreen

Notice of Invitation. The North Texas Tollway Authority (the NTTA), a regional Tollway authority and a political subdivision of the State of Texas, intends to issue a request for qualifications (RFQ) to enter into agreements or agreements with qualified architectural and engineering firms pursuant to Chapter 366 of the Texas Transportation Code and Chapter 2254 of the Texas Government Code to provide various professional Architectural and Engineering Services on a work order basis.

To be considered, potential proposers must submit a Letter of Request, requesting a copy of the Request for Qualifications (RFQ), which letter must also contain the name of the proposer, a contact person, and an address to which the RFQ may be sent. The NTTA will send only one copy of the RFQ to each proposer.

Deadline. A letter of Request notifying the NTTA of a request for an RFQ will be accepted by fax at (214) 528-4826, or by mail or hand delivery to: North Texas Tollway Authority, 5900 W. Plano Parkway, P.O. Box 260729, Plano, Texas, 75026, Attn: Ms. Nancy Greer.

Letters of Request will be received until 1:00 p.m. on May 18, 2001.

Agency Contact. Any requests for additional information regarding this notice of invitation should be sent, in writing, to Mr. Mark Bouma, P.E., Director of Engineering, at the above address.

TRD-200102377

Katherine D. Nees

Deputy Executive Director

North Texas Tollway Authority

Filed: April 24, 2001

### **Public Utility Commission of Texas**

#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 17, 2001, for retail electric provider (REP) certification, pursuant to §§39.101 -

39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Utility Choice, LLC for Retail Electric Provider (REP) certification, Docket Number 23968 before the Public Utility Commission of Texas.

Applicant's requested service area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 11, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102236

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: April 19, 2001

#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 19, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CityNet Telecom, Inc., doing business as City Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 23989 before the Public Utility Commission of Texas.

Applicant intends to provide fiber optic local exchange network services to businesses and carrier-customers.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 9, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102306

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: April 23, 2001

#### Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.25

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 17, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of Dell Telephone Cooperative, Inc. (Dell) for Temporary Waiver of Certain Provisions of the Bill

Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23967.

The Application: On August 15, 2000, the commission adopted P.U.C. Substantive Rule §26.25 requiring implementation of the changes required by the rule on or before February 15, 2001. Dell is requesting an extension of the implementation deadline, from February 15, 2001 to August 1, 2001, with respect to P.U.C. Substantive Rule §26.25(e)(1)(C) notification of change in service provider, and §26.25(e)(3) identification of all charges and fees, and the identification of those charges that must be paid to retain basic local telecommunications service.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the 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 comments should reference Docket Number 23967.

TRD-200102251  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 19, 2001



#### Notice of Application to Amend Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a revised application on April 16, 2001, by Sprint Communications Company, L.P. doing business as Sprint (Sprint) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50006.

Docket Number and Title: Application of Sprint Communications, L.P. doing business as Sprint for an Amendment to its Certificate of Operating Authority and for a Service Provider Certificate of Operating Authority (SPCOA) (Restyled), Docket Number 23552.

The Application: Applicant revised its application to include relinquishment of its COA and in lieu thereof, to seek issuance of an SP-COA. Applicant intends to exit the residential resale local exchange service market and discontinue to provide residential resale local exchange services in Southwestern Bell Telephone and Verizon service areas. Applicant will continue to provide services through its ION product offering and to offer business retail local exchange services by resale.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. You may contact 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 telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23552.

TRD-200102372  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2001



#### Public Notice of Amendment to Interconnection Agreement

On April 19, 2001, Southwestern Bell Telephone Company and Pointe-Com, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23990. 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 23990. 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 May 16, 2001, 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 23990.

TRD-200102332  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 19, 2001, Southwestern Bell Telephone Company and State Telephone-Texas, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23991. 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 23991. 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 May 16, 2001, 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 23991.

TRD-200102333

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2001

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Public Notice of Amendment to Interconnection Agreement

On April 19, 2001, Southwestern Bell Telephone Company and Trinity Valley Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 23997. 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 23997. 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 May 16, 2001, 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 23997.

TRD-200102335  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2001

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**Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Direct Outward Dialing and Call Park Directed Pursuant to P.U.C. Substantive Rule §26.215 on or about April 30, 2001, Docket Number 23992.

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 23992. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200102334  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2001

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**Texas A&M University, Board of Regents**

**Notice of Sale of Oil, Gas, and Sulphur Lease**

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 524, System Real Estate Office, The Texas A&M University System, John B. Connally Building, 301 Tarrow Drive, College Station, Texas, at 10:00 a.m., Tuesday, May 15, 2001, an oil, gas and sulphur lease on the following described land in Denton County, Texas. The property offered for lease contains 169.57 mineral acres, more or less, of land and more particularly described as follows:

Being 169.57 acres, more or less, out of the Robert Whitlock Survey, Abstract No. 1403, Denton County, Texas.

The minimum lease terms, which applies to this tract, are as follows:

- (1) Bonus: \$150 per net mineral acre
- (2) Royalty: 25%
- (3) Delay Rental: \$10.00 per net mineral acre
- (4) Primary term: Three years
- (5) Commitment to Drill: Within first year
- (6) Continuous Drilling Commitment: 120 days

(7) Net Mineral Acres: 169.57 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to the Board within 24 hours after notification that the bid has been accepted. All payments shall be in cashier's check as the Board may direct. Failure to pay the balance of the amount bid will result in forfeiture to the Board of the 25% paid. The Board of Regents of The Texas A&M University System, RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS. The successful bidder will be required to pay all advertising expenses and administrative costs.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to: Dan K. Buchly, Assistant Vice Chancellor and Director of Real Estate System, Real Estate Office, The Texas A&M University System, John B. Connally Building, Suite 519, 301 Tarrow Drive, College Station, Texas 77840-7896, (979) 458-6350.

TRD-200102237  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University, Board of Regents  
Filed: April 19, 2001

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**Texas Department of Transportation**

**Notice of Intent to Amend Contract**

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (the department) publishes this notice of its intent to amend Contract #51151F7009, Austin, for consulting services to ten rural transit districts. This contract is with the firm of Peter Schauer Associates, 25220 Highland School Road, Boonville, Missouri, 65233. The contract was executed by the department on March 30, 2001, and the notice of award was published in the *Texas Register* on April 20, 2001 (26 TexReg 3062). The total amount of the contract is \$350,000.

The contract amount will be increased to \$377,745. Peter Schauer Associates will prepare a summary document that will identify common themes and approaches to technical assistance that can be continued by the department. Peter Schauer Associates will train department personnel on the use of the summary document and its contents. The due date for this document and training is the contract ending date which is extended from March 31, 2002 to July 31, 2002.

Agency Contact: Questions about the proposed amendment may be directed to Karen Dunlap, Public Transportation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, phone (512) 416-2817, e-mail [kdunlap@dot.state.tx.us](mailto:kdunlap@dot.state.tx.us).

TRD-200102392  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 25, 2001

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**Public Notice**

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site - <http://www.dot.state.tx.us>

- click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200102235

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: April 19, 2001



### Request for Qualifications Statements

The Airport Sponsor listed below, through its agent, the Texas Department of Transportation (TxDOT), intends to engage aviation professional engineering firms for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division, will solicit and receive qualifications for professional engineering design services as described in the following project.

Airport Sponsor: City of Sugar Land, Sugar Land Municipal Airport. TxDOT Project No.: 0112SUGAR. Project Scope: Provide engineering/design services to site, clear and prep; construct new apron and hangar access taxiways for new General Aviation (GA) area facilities; construct connecting taxiway to runway; construct partial parallel taxiways and high-speed exit taxiways; construct retaining walls, drainage and detention ponds for new GA area; construct new partial parallel taxiway to runway 35 end and expand apron and hangar access taxiways. Additional services may include: environmental assessment; replace high intensity runway lights; install new medium intensity taxiway lights; upgrade existing lighting and electrical systems; construct new terminal apron; construct new partial parallel taxiway to runway 17 end and improve drainage at the Sugar Land Municipal Airport. Project Manager: Bijan Jamalabad.

Interested firms shall utilize the **recently updated Form 439**, titled "Aviation Engineering Services Questionnaire" (**August 2000 version**). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address

<http://www.dot.state.tx.us/insdtdot/orgchart/avn/avninfo/avn-info.htm>

Download the file from the selection "Engineer Services Questionnaire Packet." The form may not be altered in any way, and all printing must be in black. **QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: This is a new form updated for this submission. The form is an MS Word, Version 7, document).**

Two completed, unfolded copies of Form 439 (August 2000 version), must be postmarked by U. S. Mail by midnight May 17, 2001. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on May 18, 2001; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. May 18, 2001; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

**NEW DELIVERY OPTION.** Your form 439 may be e-mailed to TxDOT, at e-mail address:

[AVNRFQ@dot.state.tx.us](mailto:AVNRFQ@dot.state.tx.us)

E-mails must be received by midnight May 17, 2001. Received times will be determined by the marked time and date as the E-mail is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return e-mail. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before e-mailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and not change the formatting or information contained on the form following receipt. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

The airport sponsor's duly appointed committee will review all professional qualifications and select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprise (DBE) participation, design schedule, and other project matters, prior to the final selection process. The final engineer selection by the sponsor's committee will generally be made following the completion of review of proposals and/or engineer interviews. The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200102234

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: April 19, 2001



### Texas Turnpike Authority Division of the Texas Department of Transportation

#### Notice of Availability of Final Environmental Impact Statement

The Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation hereby issues this notice to advise the public that a Final Environmental Impact Statement (FEIS) has been prepared and approved for State Highway 130. State Highway 130 is a proposed 91 mile (approximate), controlled access highway. As proposed, State Highway 130 would extend from Interstate Highway 35 at State Highway 195, north of Georgetown in Williamson County, through Travis and Caldwell Counties, to Interstate 10 near Seguin in Guadalupe County. The proposed facility would be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos, New Braunfels and San Antonio. As a multimodal facility, State Highway 130 would be designed to accommodate other modes of transportation.

The purpose of State Highway 130 is to relieve congestion on Interstate Highway 35 and other major transportation facilities within the Austin-San Antonio corridor; improve mobility; and increase accessibility to important public facilities.

State Highway 130 is being developed as a toll road candidate. Accordingly, in conjunction with other project development-related activities, TTA is conducting a study to evaluate the feasibility of developing the proposed project as a toll road and financing it, in whole or in part, through the issuance of revenue bonds.

A total of nine alternatives are evaluated in the FEIS - eight (end-to-end) route alternatives and a no-build alternative. The State Highway 130

FEIS is available for review at the offices of the TTA (125 E. 11th Street, Austin, Texas or 1421 Wells Branch Parkway, Building 1, Suite 107, Pflugerville, Texas). Copies of the FEIS may be purchased from TTA for the actual cost of reproduction.

Copies of the FEIS have also been field with and are available for public review at the following public libraries:

Georgetown 808 MLK, Georgetown, Texas

Round Rock (Reference Desk) 216 E. Main St, Round Rock, Texas

Pflugerville 102 10th St, Pflugerville, Texas

Austin History Center (Reading Room) 810 Guadalupe St, Austin, Texas

Lockhart 901 Bois Darc, Lockhart, Texas

Luling 215 S. Pecan St, Luling, Texas

Seguin 707 E. College St, Seguin

Comments on the FEIS may be submitted to Ms. Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, 125 E. 11th Street, Austin, Texas 78701-2483. For addition information contact Ms. Benningfield at (512) 225-1351.

TRD-200102295

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: April 23, 2001

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## Texas Workforce Commission

Request for Proposals - High Technology Initiatives for Adults and Youth

### A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (Agency) seeks to sponsor several demonstration projects to implement new and cost-effective approaches to training existing workers, youth, and educators of youth in the field of high technology. Therefore, this RFP consists of two options. Option #1 seeks proposals for demonstration projects to train adults in specific high technology fields; and Option #2 seeks proposals for initiatives that address the training of youth and educators of youth in high technology. Offerors are invited to submit separate proposals for either or both of these options.

### B. AUTHORIZATION TO AWARD CONTRACT

The Agency is authorized to issue this RFP and award contracts under its general contracting authority in Section 302.002(b), Texas Labor Code and the Workforce Investment Act, Sec. 134(a)(3)(A).

### C. AVAILABLE FUNDING

Funding of approximately \$5,000,000 will be available for Option #1, High Tech Training for Adults. Funding of approximately \$1,000,000 will be available for Option #2, High Technology Initiatives for Youth. The contract period for either Option is for the 12-month period beginning August 15, 2001 through June 30, 2003.

### D. ELIGIBLE APPLICANTS

Offerors submitting under Option #1 must include a Local Workforce Development Board or group of Boards in conjunction with a group of employers or with an industry association in conjunction with employers. The required consortium may also include community colleges or other educators/training providers. Proposals may be submitted by a Board and a single employer if accompanied by an attestation that the employer is the only one in the local area with a particular skills need. Offerors submitting under Option #2 may include Local Boards in conjunction with employers, community colleges and/or other educators/training providers. In addition, the Board(s) may collaborate with an industry association and/or a group of employers. Offerors applying for either or both options must complete a Request for Proposal (RFP) Package and provide required documentation as requested in the application in order to be considered eligible.

### E. PROJECT SCHEDULE

Application submission deadline is June 8, 2001. The anticipated contract effective date is August 15, 2001. The Agency will hold an Offeror's Conference Call on Monday, May 7, 2001 at 1:00 p.m., Central Standard Time. To participate in the Offeror's Conference, dial (512) 463-1928; when prompted, dial the access code: 1-320-108#.

### F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Option #1: Identification of Partners & Demonstrated Ability to Perform Services 10 points, Proposed Approach 50 points, Project Administration 20 points, Budget Information 20 points. Option #2: Identification of Partners & Demonstrated Ability to Perform Services 10 points, Proposed Approach for Planning for Demonstration Project 30 points, Proposed Approach to Demonstration Project 30 points, Project Administration 20 points, Budget Information 10 points.

### G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Agency will use competitive negotiation to determine awards. Proposals will be evaluated and tentatively ranked by the Agency. Applicants submitting superior proposals may be invited to make oral presentations to the Agency.

### H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations, pursuant to a negotiated contract.

### I. TEXAS WORKFORCE COMMISSION'S CONTACT PERSON

For further information and to request a package for RFP # PPRD 00-22, contact Lucinda Anderson, Program Specialist, Texas Workforce Commission, Room 440T, 101 East 15th Street, Austin, Texas 78778-0001, (512) 936-2613, fax: (512) 936-3420, e-mail address: lucinda.anderson@twc.state.tx.us.

TRD-200102378

John Moore

Assistant General Counsel

Texas Workforce Commission

Filed: April 24, 2001

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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:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

# *Texas Register*

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